

Missouri Attorney General's Opinions - 2000

Opinion	Date	Topic	Summary
88-2000	Mar 22	COUNTIES. PUBLIC PROPERTY.	Letter to The Honorable Robert M. Clayton, III.
89-2000	Mar 22	FIRE PROTECTION DISTRICTS. VACANCY. VACANCY IN OFFICE.	Vacancies on boards for fire protection districts are to be filled by remaining board members who have been elected, unless there are less than two elected members, in which instance the vacancy is to be filled by the circuit court.
96-2000	Mar 22	COUNTY COMMISSION. LEVEE DISTRICTS.	Letter to Mason R. Gebhardt.
97-2000	Mar 22	SUNSHINE LAW. PURCHASE OF LAND.	A public governmental body may decide in closed session pursuant to Section 610.021(2) RSMo to enter into a contract that includes an option to purchase real estate at a particular price if the consideration for that contract could be affected by discussions in open sessions. However, within seventy two hours of its decision the public governmental body must make public any minutes, votes or records relating to its decision.
98-2000	May 31	SALEX TAX. UNCLAIMED PROPERTY. USE TAX.	Letter to Bob Holden.
101-2000	May 31	CITIES, TOWNS AND VILLAGES. DIVISION OF LIQUOR CONTROL. LIQUOR.	Section 311.095 RSMo 1999 Supp. does not supersede Section 311.080 RSMo 1994 as it pertains to schools and churches.
102-2000	Mar 22	SCHOOL BOARDS. SCHOOL BOARD MEETINGS. SCHOOL PROPERTY.	The board may conduct business with fewer than seven members present or voting. However, to convey school property a vote of at least four members, regardless of how many members are in attendance and are voting, is required.
108-2000	Feb 4	DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION. SCHOOL AID. SCHOOL DISTRICTS.	The term "operating levy" as used in SB 394 refers to the authorized operating levy. Therefore, while the amount actually levied may be less, passage of an operating levy of \$2.85 complies with SB 394 and qualifies the school district for the extended repayment period. Further, because the levy needed to offset the monies to be deducted from state aid is less than \$2.85, then according to plain language of

		SCHOOL FUNDS. STATE AID. TAX LEVY.	the statute, the \$2.85 levy is required.
111-2000	Mar 22	ARREST. CITIES, TOWNS AND VILLAGES. WARRANTS. WARRANTS FOR ARREST.	Letter to The Honorable Denny J. Merideth III.
114-2000	Jan 6	INITIATIVE.	Review and approval pursuant to Section 116.332, RSMo, of the sufficiency as to form of an initiative petition relating to a proposed change to Section 571.030, RSMo.
115-2000	Jan 6	INITIATIVE.	Review and approval pursuant to Section 116.332, RSMo, of the sufficiency as to form of an initiative petition relating to a proposed change to Section 571.080, RSMo.
116-2000	Jan 6	INITIATIVE.	Review and rejection pursuant to Section 116.332, RSMo, of the sufficiency as to form of an initiative petition relating to a proposed constitutional amendment revising Article I, § 23.
208-2000	Sept 7	ELECTIONS. SALES TAX. TELEPHONE TAX.	The funding by a sales tax of 1/2 percent for an enhanced 9-1-1 and central dispatch system, when approved by the voters pursuant to the ballot question listed herein, although an election irregularity, in the absence of a timely election challenge, is valid.
210-2000	Jan 24	INITIATIVE.	Review and rejection pursuant to Section 116.332, RSMo, of the sufficiency as to form of an initiative petition relating to a proposed law amending Section 217.690, RSMo.
212-2000	Jan 24	INITIATIVE.	Review and approval of legal content and form of a fiscal note summary prepared pursuant to Section 116.175, RSMo, concerning the initiative petition proposal to amend Section 571.030, RSMo.
214-2000	Jan 24	INITIATIVE.	Review and approval of legal content and form of a fiscal note summary prepared pursuant to Section 116.175, RSMo, concerning the initiative petition proposal to amend Section 571.080, RSMo.
215-2000	Jan 28	INITIATIVE.	Review and approval pursuant to Section 116.332, RSMo, of the sufficiency as to form of an initiative petition relating to a proposed constitutional amendment concerning rail passenger service.
216-2000	Jan 28	INITIATIVE.	Review and approval pursuant to Section 116.332, RSMo, of the sufficiency as to form of an initiative petition relating to a proposed constitutional amendment concerning technology parks.
217-2000	Jan 28	INITIATIVE.	Review and approval of legal content and form of a summary

			statement prepared pursuant to Section 116.334, RSMo Supp., regarding a proposed amendment to Section 571.080 of the Missouri Revised Statutes.
219-2000	Feb 4	INITIATIVE.	Review and approval pursuant to Section 116.332, RSMo, of the sufficiency as to form of an initiative petition relating to a proposed constitutional amendment revising Article X and concerning taxation of electricity.
220-2000	Feb 4	INITIATIVE.	Review and approval pursuant to Section 116.332, RSMo, of the sufficiency as to form of an initiative petition relating to a proposed constitutional amendment revising Article X and concerning taxation of electricity and natural gas.
221-2000	Jan 28	INITIATIVE.	Review and approval of legal content and form of a summary statement prepared pursuant to Section 116.334, RSMo Supp., regarding a proposed amendment to Section 571.030 of the Missouri Revised Statutes.
224-2000	Sept 7	BOARD OF COUNTY VISITORS. COUNTY OFFICIALS. LEGAL EXPENSE FUND.	Members of the Board of County Visitors are not immune from liability for their acts as Board members because they are volunteers; however, they have available defenses such as the public duty doctrine and official immunity. Board members are not state officials and are not covered by the provisions of the State Legal Expense Fund.
225-2000	Feb 15	GAMBLING. GAMBLING DEVICES. MISSOURI GAMING COMMISSION. SLOT MACHINES.	Letter to The Honorable May E. Scheve.
226-2000	Feb 17	INITIATIVE.	Review and approval of legal content and form of a summary statement prepared pursuant to Section 116.334, RSMo Supp., regarding a proposed amendment to Article IV, Section 30 of the Missouri Constitution relating to rail passenger service.
227-2000	Feb 17	INITIATIVE.	Review and approval of legal content and form of a summary statement prepared pursuant to Section 116.334, RSMo Supp., regarding a proposed amendment to Article IV, Section 36(a) of the Missouri Constitution relating to technology parks.
228-2000	Feb 18	INITIATIVE.	Review and approval of legal content and form of a fiscal note summary prepared pursuant to Section 116.175, RSMo, concerning a proposed constitutional amendment regarding technology parks.
229-2000	Feb 18	INITIATIVE.	Review and approval of legal content and form of a fiscal note summary prepared pursuant to Section 116.175, RSMo, concerning a proposed constitutional amendment regarding rail passenger service.

230-2000	Feb 18	INITIATIVE.	Review and approval of legal content and form of a summary statement prepared pursuant to Section 116.334, RSMo Supp., regarding a proposed amendment to the Missouri Constitution relating to taxation of electricity.
231-2000	Feb 18	INITIATIVE.	Review and approval of legal content and form of a summary statement prepared pursuant to Section 116.334, RSMo Supp., regarding a proposed amendment to the Missouri Constitution relating to taxation of electricity and natural gas.
234-2000	Feb 24	INITIATIVE.	Review and approval of legal content and form of a fiscal note summary prepared pursuant to Section 116.175, RSMo, concerning a proposed constitutional amendment regarding the taxation of electricity.
235-2000	Sept 7	BOARD OF ALDERMEN. CITIES, TOWNS AND VILLAGES. FOURTH CLASS CITIES. PERSONNEL RECORDS.	The board of aldermen may review the contents of a personnel file of a city's employee if such is necessary to care, manage, or control the city. The authority may be delegated through resolution or ordinance to one or more members of the board.
238-2000	Feb 24	INITIATIVE.	Review and approval of legal content and form of a fiscal note summary prepared pursuant to Section 116.175, RSMo, concerning a proposed constitutional amendment regarding the taxation of electricity and natural gas.
239-2000	Mar 22	CITIES, TOWNS AND VILLAGES. LAGERS. PENSIONS. RETIREMENT. THIRD-CLASS CITIES.	Letter to Claire C. McCaskill.
241-2000	Mar 3	INITIATIVE.	Review and approval pursuant to Section 116.332, RSMo, of the sufficiency as to form of an initiative petition relating to a proposed law regarding unidentified flying objects.
245-2000	June 5	COLLECTOR. DEPUTY COLLECTOR.	The chief deputy is not required to resign while running for the office of collector nor is the chief deputy required to resign as chief deputy if elected collector between the election and assuming the office of collector.
250-2000	Mar 20	INITIATIVE.	Review and rejection pursuant to Section 116.332, RSMo, of the sufficiency as to form of an initiative petition relating to a proposed

			law concerning mandatory minimum sentencing.
251-2000	Mar 20	INITIATIVE.	Review and rejection pursuant to Section 116.332, RSMo, of the sufficiency as to form of an initiative petition relating to a proposed law concerning the state board of probation and parole.
252-2000	Mar 20	INITIATIVE.	Review and approval of legal content and form of a summary statement prepared pursuant to Section 116.334, RSMo Supp., regarding an initiative petition proposal relating to unidentified flying objects.
253-2000	Mar 20	INITIATIVE.	Review and approval of legal content and form of a fiscal note summary prepared pursuant to Section 116.175, RSMo, concerning an initiative petition proposal relating to unidentified flying objects.
254-2000	Sept 7	CAPITAL IMPROVEMENTS SALES TAX. CITIES, TOWNS AND VILLAGES. COMPUTER SOFTWARE.	Normally a municipality may not pay for computer software from sales tax revenue authorized under Section 94.577 RSMo 1999 Supp. However, if there are computers dedicated to "maintenance" of a capital improvement for items such as security, climate control, or fire protection, software for such computers may be purchased from such dedicated funding.
255-2000	June 2	BOARD OF VISITORS. SUNSHINE LAW.	The provisions of Chapter 610 RSMo, the Sunshine Law, applies to a Board of Visitors created by Section 221.320 RSMo.
265-2000	June 12	BALLOTS. REFERENDUM.	Review and approval of legal content and form of a summary statement prepared pursuant to Section 116.160, RSMo Supp. 1999, relating to bingo game operators.
266-2000	June 14	BALLOTS. REFERENDUM.	Review and approval of legal content and form of a summary statement prepared pursuant to Section 116.160, RSMo Supp. 1999, relating to compensation and retention of public officers.
267-2000	June 12	BALLOTS. REFERENDUM.	Review and approval of legal content and form of a fiscal note summary prepared pursuant to Section 116.175, RSMo, concerning a proposed constitutional amendment relating to compensation and retention of public officers.
268-2000	June 12	BALLOTS. REFERENDUM.	Review and approval of legal content and form of a fiscal note summary prepared pursuant to Section 116.175, RSMo, concerning a proposed constitutional amendment relating to bingo game operators.
274-2000	Sept 7	ARREST REPORTS. SUNSHINE LAW.	The Sunshine Law requires disclosure of the race of the arrested person and the location of the arrest from an arrest report if that information is contained in the arrest report and the arrest report has not been closed pursuant to the provisions of the Sunshine Law. The status of the records is not affected if they are maintained in an electronic format.

297-2000	Nov 16	INITIATIVE.	Review and approval pursuant to Section 116.332, RSMo, of the sufficiency as to form of an initiative petition relating to a proposed constitutional amendment concerning firefighters, ambulance personnel, and dispatchers having the authority to organize and bargain collectively.
299-2000	Nov 28	INITIATIVE.	Review and approval pursuant to Section 116.332, RSMo, of the sufficiency as to form of an initiative petition relating to a proposed law to amend Section 571.030, RSMo, by The Vermont Project.
301-2000	Dec 6	INITIATIVE.	Review and approval of legal content and form of a fiscal note summary prepared pursuant to Section 116.175, RSMo, concerning a proposed constitutional amendment relating to firefighters collective bargaining rights.
303-2000	Dec 6	INITIATIVE.	Review and approval of legal content and form of a summary statement prepared pursuant to Section 116.334, RSMo Supp., relating to firefighters, ambulance personnel, and dispatchers having the authority to organize and bargain collectively.
315-2000	Dec 15	INITIATIVE.	Review and approval pursuant to Section 116.332, RSMo, of the sufficiency as to form of an initiative petition regarding a proposed constitutional amendment by Husch & Eppenberger, LLC, relating to the Tobacco Settlement, Version 3A.
316-2000	Dec 15	INITIATIVE.	Review and approval pursuant to Section 116.332, RSMo, of the sufficiency as to form of an initiative petition regarding a proposed constitutional amendment by Husch & Eppenberger, LLC, relating to the Tobacco Settlement, Version 4A.
322-2000	Dec 15	INITIATIVE.	Review and approval of legal content and form of a fiscal note summary prepared pursuant to Section 116.175, RSMo, concerning an initiative petition proposal to amend Section 571.030, RSMo, The Vermont Project.
323-2000	Dec 15	INITIATIVE.	Review and approval of legal content and form of a summary statement prepared pursuant to Section 116.334, RSMo Supp., relating to an initiative petition proposal to amend Section 571.030, RSMo.
324-2000	Dec 22	INITIATIVE.	Review and approval pursuant to Section 116.332, RSMo, of the sufficiency as to form of an initiative petition regarding a proposed constitutional amendment by Husch & Eppenberger, LLC, relating to the Tobacco Settlement, Version 3B.
325-2000	Dec 22	INITIATIVE.	Review and approval pursuant to Section 116.332, RSMo, of the sufficiency as to form of an initiative petition regarding a proposed constitutional amendment by Husch & Eppenberger, LLC, relating to the Tobacco Settlement, Version 4B.

329-2000	Dec 29	INITIATIVE.	Review and rejection pursuant to Section 116.332, RSMo, of the sufficiency as to form of an initiative petition relating to a proposed law amending Section 195.010 RSMo by Matt Kleinsorge.
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ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

JEFFERSON CITY

65102

March 22, 2000

P.O. Box 899
(573) 751-3321

OPINION LETTER NO. 88-2000

The Honorable Robert M. Clayton III
Representative, District 10
State Capitol Building
Jefferson City, MO 65101

Dear Representative Clayton:

You have asked for clarification as to the legality of Marion County selling property to the city of Palmyra. The attachment to your request is a letter from the county clerk of Marion County in which the clerk asks whether the county would be required to offer the property through a public auction or sealed bid process. According to the letter the county is considering selling a golf course it owns to the city but wants to make sure it is continued as a golf course.

Section 49.270 RSMo provides that a county "may sell and cause to be conveyed any real estate . . . belonging to the county." There are no restrictions as to the manner of such a sale and, therefore, no requirements the sale be by public auction or sealed bid.

However, this office would caution the county and city that they need to examine closely any deeds upon which the county relies to claim ownership to the land in question to determine whether there exists any restrictions to the county's authority to convey or the city's authority to acquire the property in question. Restrictions in the deeds and covenants which run with the land should be reviewed before any final conveyance is made.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

FIRE PROTECTION DISTRICTS: Vacancies on boards for fire protection
VACANCY: districts are to be filled by remaining board
VACANCY IN OFFICE: members who have been elected, unless there

are less than two elected members, in which instance the vacancy is to be filled by the circuit court.

March 22, 2000

OPINION NO. 89-2000

The Honorable Jim Kreider
Representative, District 142
State Capitol Building
Room 301
Jefferson City, MO 65101

Dear Representative Kreider:

You have asked this office the following questions:

Pursuant to section 321.200.2, RSMo, are appointed members of a board permitted by law to fill a vacancy?

Does section 321.200.2 RSMo limit the members of a board who shall participate in filling a vacancy on said board to only those members of the board who have been elected by a vote of the people (if the number of board members shall not be less than two and to the circuit court if number of said board members shall be greater than one)?

Section 321.200.2 RSMo 1994 provides that "Any vacancy on the board shall be filled by the remaining elected members of the board, except when less than two elected members remain on the board any vacancy shall be filled by the circuit court of the county in which all or a majority of the district lies."

Rules of statutory construction includes giving force and meaning to every word in a statute, if at all possible. Union Elec. Co. v. Morris, 222 S.W.2d 767, 359 Mo. 564 (Mo. 1949). Words are to be given their ordinary meaning. U.S. v. Jones, F.2d 444 (8th Cir. 1987).

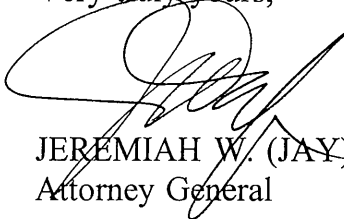
"Elect" is defined as "to select by vote for an office." The American Heritage Dictionary, page 592.

The phrase "members of the board" is modified by the word "elected." Prior to 1981 the statute provided that "Any vacancy on the board shall be filed by the remaining member or members of the board." Section 321.200 RSMo 1978. In 1981 the adjective "elected" was added to the statute modifying "members." It is a tenet of statutory construction that a change in a statute is to be given some effect. State ex rel. Thompsen-Stearns-Roger v. Schaffner, 489 S.W.2d 207, 212 (Mo. 1973). To give meaning to the word "elected" in this context requires a construction that distinguishes those board members who are elected from those appointed.

CONCLUSION

In conclusion it is this office's opinion that in applying these rules of statutory construction and the definition of "elect," that vacancies on boards for fire protection districts are to be filled by remaining board members who have been elected, unless there are less than two elected members, in which instance the vacancy is to be filled by the circuit court.

Very truly yours,



JEREMIAH W. (JAY) NIXON
Attorney General



ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

JEFFERSON CITY

65102

March 22, 2000

P.O. Box 899
(573) 751-3321

OPINION LETTER NO. 96-2000

Mason R. Gebhardt
Howard County Prosecuting Attorney
113 North Main
Fayette, MO 65248

Dear Mr. Gebhardt:

This letter is written in response to your request for an opinion whether a county commission can dissolve levee districts formed by the county commission in order to consolidate them into one district. For the reasons stated below we do not believe that county commissions have that authority.

Levee districts can be formed either by petitioning the circuit court (Section 245.015-.025 RSMo) or by creation by a county commission (Section 245.290 RSMo 1994). There is a specific statutory authority for the dissolution of districts formed by petition, Section 245.275 RSMo 1994, but no provision for dissolving those formed by a county commission.

A levee district formed by a county commission is a body corporate and a political subdivision of this state. Section 245.290 RSMo 1994. A political subdivision of the state possesses only such powers as are conferred on it by express or implied provisions of the law. State vs. Steinbach, 274 S.W.2d 588 (Mo. App. 1955). Implied powers are those essential to the declared objects and purposes of the political subdivision; "essential" is used in the sense of "indispensable" and not merely convenient. State vs. McReynolds, 193 S.W.2d 611 (Mo. 1946).

The law regarding the dissolution power of political subdivisions may be found in those cases concerning the power of dissolution or disincorporation of municipal corporations. A municipal corporation is but a political subdivision of the state. State

vs. Anderson, 101 S.W.2d 530 (Mo. App. 1937); State vs. Ferguson, 65 S.W.2d 97, (Mo. 1934), cert. denied 291 U.S. 682.

The general law of Missouri relating to the power of a municipal corporation to disincorporate is stated in In Re City of Kinloch, 242 S.W.2d 59, 62 (Mo. 1951):

A municipal corporation when once incorporated can only become disincorporated by resorting to the proceedings pointed out by statute.

That general rule was reiterated with approval in Anderson vs. Smith, 377 S.W.2d 554 (Mo. App. 1964). The Smith case involved a fact situation where Columbia, Missouri, had voted for and passed the "Land Clearance for Redevelopment Authority Law," Section 99.300, RSMo Cum. Supp. 1965, et seq. Subsequently, an ordinance containing an initiative petition was submitted to the vote of the people to repeal the Redevelopment Authority ordinance. In holding that the initiative process was inapplicable, the court stated, l.c. 560:

* * * The statute before us does not provide a prescribed manner for dissolving this public corporation thusly created, once empowered to exercise the power set out in state statute, regardless of the size of the city or county in which it was created. Created as it was, by the State Legislature, and designed to carry out a declared public policy of the legislature, it would seem to be the intent of the statute that this public corporation would not be dissolved except at such time and in such manner as its creator, the State Legislature, shall determine and provide.

* * *

This office has issued opinions that soil and water conservation subdistricts, nursing home districts, hospital districts, and sewer districts cannot dissolve without specific statutory authority, and, upon those entities obtaining such authority, this office has withdrawn the opinions. Attorney General Opinions 72-1963, 262-1968, 42-1963, 394-1965, and 88-1962.

Mason R. Gebhardt
Page 3

CONCLUSION

It is therefore the conclusion of this office that a levee district created under Section 245.290 RSMo is a political subdivision of the State of Missouri and as such has no power to dissolve in the absence of statutory authority providing for such dissolution.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeremiah W. Nixon", written over a horizontal line.

JEREMIAH W. (JAY) NIXON
Attorney General

SUNSHINE LAW:
PURCHASE OF LAND:

A public governmental body may decide in
closed session pursuant to Section 610.021(2)

RSMo to enter into a contract that includes an option to purchase real estate at a particular price if the consideration for that contract could be affected by discussions in open sessions. However, within seventy two hours of its decision the public governmental body must make public any minutes, votes or records relating to its decision.

March 22, 2000

OPINION NO. 97-2000

The Honorable Sam D. Leake
Representative, District 9
State Capitol Building
Jefferson City, MO 65101

Dear Representative Leake:

This opinion is in response to your question:

May a municipality enter into an option contract to purchase real estate which contract specifically states the purchase price of the real estate if said option is exercised in closed session pursuant to Section 610.02, RSMo. (part of the Sunshine Law) and keep the vote and records relating to said real estate transaction closed and keep the same from being made public until 72 hours after that option is exercised or actual purchase is completed or does Section 610.021(2) require the minutes vote or public record approving the option contract to be made public within 72 hours after the execution of the actual contract?

Section 610.021(2) RSMo provides that a public governmental body can hold a closed meeting, record and vote regarding:

(2) Leasing, purchase or sale of real estate by a public governmental body where public knowledge of the transaction might adversely affect the legal consideration therefor. However, any minutes, vote or public record approving a contract relating to the leasing, purchase or sale

of real estate by a public governmental body shall be made public within seventy-two hours after execution of the lease, purchase or sale of the real estate;

Before reviewing the particular question posed, a review of Chapter 610 RSMo, the Sunshine Law, is in order. It is the expressed view of the General Assembly that the public policy of this state is that meetings, records and votes of public governmental bodies are to be open to the public unless otherwise specified and that those exceptions are to be strictly construed. Section 610.011.1 RSMo 1994. It is incumbent upon members of public governmental bodies that they are cautious in asserting a basis to justify closing a meeting, record or vote.

A municipality is a public governmental body. Section 610.010(4) RSMo 1999 Supp. As a public governmental body it is required to follow the mandates of Chapter 610 RSMo.

Section 610.021 RSMo sets forth the enumerated bases for closing a meeting of a public governmental body. As discussed above subsection (2) provides that such a meeting can be closed to discuss

(2) Leasing, purchase or sale of real estate by a public governmental body where public knowledge of the transaction might adversely affect the legal consideration therefor. However, any minutes, vote or public record approving a contract relating to the leasing, purchase or sale of real estate by a public governmental body shall be made public within seventy-two hours after execution of the lease, purchase or sale of the real estate;

The information supplied to this office indicates that a city desires to enter into an option contract to purchase some real estate. The price for the property, if the option is exercised, would be set. However, some members of the city council apparently want to keep from disclosing the contract price until after the option to purchase is exercised.

The city council can only close meetings, records or votes as provided in Chapter 610 RSMo. Under the circumstances you have described if the city council can justify that the purchase price of the property it seeks to obtain will be affected by discussions in open sessions, it can go into closed sessions by abiding by the provisions

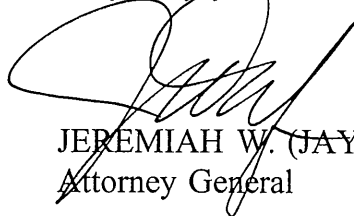
of Section 610.022 RSMo 1999 Supp. Once the city council has decided how it will proceed, it has seventy-two hours to make public its minutes, votes, and public records regarding the leasing, purchase or sale of real estate. Presumably among the records to be made public within that time period would be the option contract with the price for exercising the option identified thereon.

We find no justification for keeping from the public the provisions of such an option contract beyond the seventy-two hour time period in Section 610.021(2). Moreover, we point out that even though a public governmental body may be able to close a meeting, record or vote, Chapter 610 does not obligate it to do so. Section 610.022.4 RSMo 1999 Supp. We further note that a liberal construction favoring openness has been recognized by this office in the past. See Attorney General Opinion No. 30-88.

CONCLUSION

We find that a public governmental body may decide in closed session pursuant to Section 610.021(2) RSMo to enter into a contract that includes an option to purchase real estate at a particular price if the consideration for that contract could be affected by discussions in open sessions. However, within seventy two hours of its decision the public governmental body must make public any minutes, votes or records relating to its decision.

Very truly yours,



JEREMIAH W. (JAY) NIXON
Attorney General



ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

JEFFERSON CITY

65102

May 31, 2000

P.O. Box 899
(573) 751-3321

OPINION LETTER NO. 98-2000

Bob Holden
State Treasurer
P.O. Box 210
Jefferson City, MO 65109

Dear Mr. Holden:

You have written this office asking the following question:

Are sales and use tax refunds distributed pursuant to Chapter 144 RSMo considered "unclaimed property" for the purpose of Chapter 447 RSMo?

Sections 447.500-595 RSMo deal with what constitutes unclaimed property and the disposition of such property. There are several provisions that identify the types of property that may be classified as presumed abandoned, including Section 447.505 RSMo, which deals with property held or owned by a banking or financial organization.

Chapter 144 RSMo sets the procedure for sales and use tax payments and refunds. Section 144.190 RSMo 1999 Supp. provides that overpayment of tax shall either be credited to "the person legally obligated to remit the tax" or "the balance shall be refunded to the person legally obligated to remit the tax." If a check is sent for a refund made to the "person legally obligated to remit the tax" and the check is returned as undeliverable, and the check remains uncashed for the time period set out in Chapter 447 RSMo, then the provisions of that chapter are implicated.

It is important to distinguish between "unclaimed property" under the statutory framework and property that escheats to the state. "[Escheat is] a procedure with ancient origins whereby a sovereign may acquire title to abandoned property if after a number of years no rightful owner appears." State of Texas v. State of New Jersey, 379 U.S. 674, 85 S.Ct. 626, 627[1], 13 L.Ed.2d 596 (1965). When the state takes

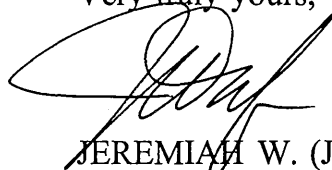
Bob Holden
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property by escheat, its position is like that of an ultimate distributee, in default of other statutory distributees. Jacob v. Leggett, 295 S.W.2d 825, 830[4] (Mo. banc 1956). Title to the escheated property vests in the state. State ex inf. Kell v. Buchanan, 210 S.W.2d 359, 362[4] (Mo. 1948); Section 470.230, RSMo 1994. Property may escheat to the state under the circumstances described in the general escheat statutes, Sections 470.010 through 470.260, RSMo 1994, and under specific statutes as, for example, Sections 470.270 through 470.350, 475.325, 456.640 through 456.650, and 141.580, RSMo 1994 and Sections 474.010 and 630.320 RSMo 1999 Supp.

This office has previously concluded that abandoned money and other property does not accrue to the state "by escheat" when it is delivered to the state pursuant to the abandoned property provisions of Sections 447.500 to 447.595 RSMo. Attorney General Opinion 89-88. When there is a statutory scheme such as established in the above cited provisions, the state acts as a custodian of the "abandoned" property and the owner can make a claim at any time. See the Prefactory Note to the Uniform Disposition of Unclaimed Property Act, 8A U.L.A. 135, 136-137.

This office concludes that if there are such situations in which a refund is not deliverable to the person obligated to remit the tax, then the provisions of Sections 447.500 to 447.595 RSMo would take effect.

Very truly yours,



JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

CITIES, TOWNS AND VILLAGES:
DIVISION OF LIQUOR CONTROL:
LIQUOR:

Section 311.095 RSMo 1999 Supp.
does not supersede Section 311.080
RSMo 1994 as it pertains to schools

and churches.

May 31, 2000

OPINION NO. 101-2000

The Honorable David L. Reynolds
Representative, District 77
State Capitol Building
Jefferson City, MO 65101

Dear Representative Reynolds:

You have written this office a letter asking whether the issuance of a resort liquor license in accordance with Section 311.095 supersedes the requirements of Section 311.080 as it pertains to schools and churches.

Section 311.080 RSMo 1994 prohibits liquor establishments within 100 feet of any school, church or other building regularly used for religious service and grants to cities, towns and villages the authority by ordinance to prohibit a license for such an establishment within a distance of 300 feet of a school, church or building used for religious service. Section 311.220 RSMo provides:

The board of aldermen, city council or other proper authorities of incorporated cities, may charge for licenses issued to manufacturers, distillers, brewers, wholesalers and retailers of all intoxicating liquor, located within their limits, fix the amount to be charged for such license, subject to the limitations of this law, and provide for the collection thereof, make and enforce ordinances for the regulation and control of the sale of all intoxicating liquors within their limits, provide for penalties for the violation of such ordinances, where not inconsistent with the provisions of this law.

Section 311.095 RSMo 1999 Supp. provides that "notwithstanding any other provisions of this chapter to the contrary" the supervisor of liquor control can issue licenses to a "resort" as that term is defined in that section. The answer to your question is

determined by the effect of the "notwithstanding" language in Section 311.095 RSMo 1999 Supp.

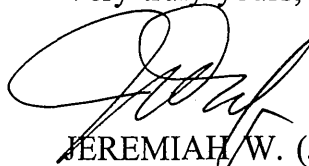
A recent case addressed the issue of whether the "notwithstanding" language in Section 311.095 rendered the provisions in Sections 311.080 RSMo and 311.220 RSMo 1994 of no effect. In Casey's General Store v. City of West Plains, 9 S.W.3d 712 (Mo. App. 1999) the city of West Plains prohibited liquor establishments within 300 feet of a church and prosecuted an employee of a Casey's convenience store for selling liquor when the store had a "resort" license from the supervisor of liquor control but did not have a city license. The store was within 300 feet of a church, and the city had an ordinance prohibiting the issuance of a license within that distance. Casey's claimed that the "notwithstanding" language in Section 311.095 RSMo 1999 Supp. precluded the necessity for it to obtain a city license.

In ruling in favor of West Plains and against Casey's the court reasoned that the "notwithstanding" language was not intended to "supersede the all-encompassing authority to license provided in Section 311.220 . . . we are unable to discern anything . . . which leads to the conclusion that it was intended to deprive an incorporated city of the specific authority granted in Section 311.220 to license the sale of intoxicating liquors in situations where the state had issued a 'resort' license." Casey's, supra at 719. The court also rejected Casey's argument that a resort license issued pursuant to Section 311.095 preempted and superseded the provisions of Section 311.080 and the city ordinance. Casey's, supra at 720-721.

CONCLUSION

Section 311.095 RSMo 1999 Supp. does not supersede Section 311.080 RSMo 1994 as it pertains to schools and churches.

Very truly yours,



JEREMIAH W. (JAY) NIXON
Attorney General



ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

JEFFERSON CITY
65102

P.O. Box 899
(573) 751-3321

March 22, 2000

OPINION LETTER NO. 102-2000

The Honorable Chuck Purgason
Representative, District 151
State Capitol Building
Jefferson City, MO 65101

Dear Representative Purgason:

This letter addresses the following questions:

1. Must all seven members of a school board be present to constitute a whole board as required by RSMo 177.091
2. In the case of one absent board member, would the votes of the remaining board members present (six) be considered a whole board?
3. In the case of one board member abstaining, would the vote still be considered by a whole board?

Section 177.091 RSMo, which applies to seven member boards, provides:

If there is any school property, the ownership of which is vested in the district, that is no longer required for the use of the district, the board, by an affirmative vote of a majority of the whole board, may authorize and direct the sale or lease of the property.

It is unclear from your request the relationship between the school board and the Alton Heritage Committee. However, it is unnecessary to understand that relationship to answer your questions.

The "whole board" is the complete board. See American Heritage Dictionary, page 2038 (3rd Ed. 1996). Because the board consists of seven individuals the "whole board" is seven. "Majority" is defined as a number more than half. American Heritage Dictionary, page 1085 (3d Ed. 1996). Words are to be given their normal meanings. Spradlin v. City of Fulton, 982 S.W.2d 255 (Mo. 1998).


The issue you present is how many affirmative votes are needed to transfer school property for those districts with seven board members. There are instances in which a quorum may be necessary to commence a meeting. See Attorney General Opinion 284-1963. If a quorum is four a motion may pass with only three votes in affirmative. However, the statute is clear that to dispose of property requires a vote of the majority of the "whole board," which is at least four affirmative votes.

The event of a member either being absent or abstaining has no affect on the question what constitutes the "whole board." Regardless of the number of members present, and regardless if any members abstain from voting, it will take four affirmative votes to dispose of property of the school district.

An interpretation that requires all seven members of the board to vote in favor of the disposition of the property would ignore the plain meaning of the statute. The result would be that one disgruntled member could prevent the board from acting by either not attending a meeting, or, if in attendance, abstaining from voting. Words should be given their plain and ordinary meaning and should be interpreted to avoid absurd results. McCollum v. Director of Revenue, 906 S.W.2d 368 (Mo. 1995).

It is our conclusion that the board may conduct business with fewer than seven members present or voting. However, to convey school property a vote of at least four members, regardless of how many members are in attendance and are voting, is required.

Very truly yours,



JEREMIAH W. (JAY) NIXON
Attorney General

DEPARTMENT OF ELEMENTARY
& SECONDARY EDUCATION:
SCHOOL AID:
SCHOOL DISTRICTS:
SCHOOL FUNDS:
STATE AID:
TAX LEVY:

The term "operating levy" as used in SB 394 refers to the authorized operating levy. Therefore, while the amount actually levied may be less, passage of an operating levy of \$2.85 complies with SB 394 and qualifies the school district for the extended repayment period. Further, because the levy needed to

offset the monies to be deducted from state aid is less than \$2.85, then according to plain language of the statute, the \$2.85 levy is required.

February 4, 2000

OPINION NO. 108-2000

Dr. Robert E. Bartman
Commissioner of Education
Department of Elementary and Secondary Education
P.O. Box 480
Jefferson City, MO 65102-0480

Dear Dr. Bartman:

This opinion is in response to your questions asking:

1. Under subsection 2 of CCS for HS for HCS for SCS for SB 394 (SB 394), could the school district board of education take a tax roll back under section 164.013 (Proposition C) so that the district's levy is less than two dollars and eighty-five cents and continue to qualify for extended time for repayment over the five-year period provided under Subsection 8 of section 165.011 of SS No. 2 for HCS for HB 889 (HB 889) as long as the amount generated was sufficient to repay the amount of state aid to be deducted?

2. Must a district continue to levy to taxpayers the greater of two dollars and eighty-five cents if that amount exceeds the levy which produces an increase in total state and local revenues as determined by the Department of Elementary and Secondary Education which is equal to or greater than the amount of state aid to be deducted pursuant to subsection 8 of section 165.011, RSMo, in order to

qualify for the extended repayment period authorized under
HB 889?

Factually, our understanding, as communicated in your request, is that a school district expended monies from its incidental fund in the 1997-98 and 1998-99 school years for capital projects in excess of what it was authorized to transfer to the capital projects fund. The funds were used to complete building projects. Under then applicable provisions of state law, the Department of Elementary and Secondary Education was required to deduct the amount of excess expenditures from the district's state aid during the following fiscal year as a penalty.

In the 1999 legislative session, HB 889 and SB 394 were passed. HB 889 provides a five year repayment period for a school district that made an improper transfer of funds from the incidental fund to the capital projects fund. SB 394 requires that the extended repayment period not be allowed unless:

[T]he voters of such district approve an operating levy increase to the greater of two dollars and eighty-five cents or the levy which produces an increase in total state and local revenues as determined by the department of elementary and secondary education which is equal to or greater than the amount of state aid to be deducted pursuant to subsection 8 of § 165.011, RSMo, by April 30, 2000.

The school district has obtained voter approval of an operating levy increase to \$2.85. However, with the Proposition C rollback (§ 164.013, RSMo), the levy actually paid by the taxpayers is less than \$2.85.

I.

Your first question appears to ask whether the school district qualifies for the five-year repayment period by increasing its authorized operating levy to \$2.85, or must the adjusted operating levy (after Proposition C rollback and other adjustments), the amount actually levied to the taxpayer, be \$2.85. To answer this question, we must determine whether the term "operating levy," as used in SB 394 (codified at section 165.015, RSMo Supp. 1999), means the authorized operating levy or the adjusted operating levy. If it means the adjusted levy, then it may be necessary for the school district to pass another ballot issue prior to April 30, 2000, that would increase the levy actually paid to \$2.85.

When interpreting statutes, the intent of the legislature must be ascertained by considering the plain and ordinary meaning of the words used in the statute. *Jones v. Director of Revenue*, 832 S.W.2d 516, 517 (Mo. banc 1992). The term "operating levy for school purposes" is defined at section 163.011(13), RSMo Supp. 1999. It states in pertinent part:

For districts making transfers pursuant to subsection 4 of section 165.011, RSMo, based upon amounts multiplied by the guaranteed tax base, or making payments or expenditures related to obligations made pursuant to section 177.088, RSMo, or any combination of such transfers, payments or expenditures, means the sum of tax rates levied for teachers' and incidental funds plus the operating levy or sales tax equivalent pursuant to section 162.1100, RSMo, of any transitional school district containing the school district, in the payment year, and, for other districts, means the sum of tax rates levied for incidental, teachers', debt service and capital projects funds plus the operating levy or sales tax equivalent pursuant to section 162.1100, RSMo, of any transitional school district containing the school district, with no more than eighteen cents of the sum levied in the debt service and capital projects funds. Any portion of the operating levy for school purposes levied in the debt service and capital project funds in excess of a sum of ten cents must be authorized by a vote of the people, after August 28, 1998, approving an increase in the operating levy, or a full waiver of the rollback pursuant to section 164.013, RSMo, with a tax rate ceiling in excess of the minimum tax rate or an issuance of general obligation bond.

* * *

According to the statute, the operating levy is essentially the sum of tax rates levied for a variety of school funds. Noticeably absent from this definition is the inclusion of the Proposition C rollback or any other adjustments or reductions. This definition sets forth the elements of a school district's authorized operating levy.

On the other hand, when the legislature has intended for a statute to require an adjusted operating levy, it has used other specific language. For example, in order for

a school district to be eligible for increases in state aid the adjusted levy, or amount actually levied, must be at least \$2.75. Section 163.021.2, RSMo Supp. 1999, states in pertinent part:

Beginning with the tax year which commences January 1, 1998, and for the 1998-99 school year and subsequent tax and school years, no school district shall receive more state aid, as calculated under section 163.031 for its education program, exclusive of categorical add-ons, than it received per eligible pupil for the school year 1993-94, unless it has an operating levy for school purposes, as determined pursuant to section 163.011, of not less than two dollars and seventy-five cents after all adjustments and reductions . . .

As can be seen from the plain language of this statute, when the legislature intended for the minimum levy amount for school aid increases to be based on an adjusted levy figure, it specifically used language stating that the minimum qualifying levy amount was to be determined after all adjustments and reductions.

However, the legislature, in enacting SB 394, did not use any language similar in terms, or effect, to that used in section 163.021, RSMo Supp. 1999. Rather, the bill only requires that the school district obtain an operating levy increase in order to qualify for the extended repayment period. The omission of language like that found in section 163.021, RSMo Supp. 1999, demonstrates a legislative intent that the term "operating levy" as used in SB 394 refers to the authorized operating levy, as defined in section 163.011(13), RSMo Supp. 1999, rather than an adjusted operating levy.

Accordingly, I conclude that the term "operating levy" as used in SB 394 refers to a school district's authorized operating levy, and not an adjusted levy after adjustments and reductions. Therefore, the school district appears to have complied with SB 394 by obtaining voter approval of an operating levy of \$2.85. The amount actually levied does not have to equal or exceed \$2.85.

II.

Your second question appears to ask whether a school district must levy a \$2.85 levy to qualify for the extended repayment period if the amount needed to offset the

Dr. Robert E. Bartman
Page 5

monies to be deducted from state aid requires less than a \$2.85 levy. The answer to this question is determined by the plain language of the statute.

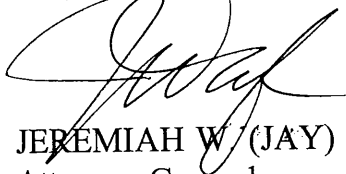
SB 394 requires the voters to approve an operating levy to the greater of \$2.85 or the levy which produces an increase in total state and local revenues as determined by the department which is equal to or greater than the amount of state aid to be deducted. In other words, the \$2.85 levy acts as a floor. Only if the department determines that a levy in excess of \$2.85 is needed will the department's determined levy be required for statutory compliance.

Therefore, in this case, if the levy needed to offset the amount of monies to be deducted from state aid is less than \$2.85, then the school district's operating levy of \$2.85 is what is required to comply with the statute.

Conclusion

In conclusion, it is the opinion of this office that the term "operating levy" as used in SB 394 refers to the authorized operating levy. Therefore, while the amount actually levied may be less, passage of an operating levy of \$2.85 complies with SB 394 and qualifies the school district for the extended repayment period. Further, because the levy needed to offset the monies to be deducted from state aid is less than \$2.85, then according to plain language of the statute, the \$2.85 levy is required.

Very truly yours,



JEREMIAH W. (JAY) NIXON
Attorney General



ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

JEFFERSON CITY

65102

March 22, 2000

P.O. Box 899
(573) 751-3321

OPINION LETTER NO. 111-2000

The Honorable Denny J. Merideth III
Representative, District 162
State Capitol Building
Jefferson City, MO 65101

Dear Representative Merideth:

You have asked this office:

In relation to RSMo 479.100, does a municipal officer have the authority to execute a warrant outside the city limits but within the county limits, or does that authority rest only with the county sheriff?

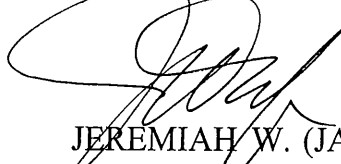
Section 479.100 RSMo provides:

All warrants issued by a municipal judge, or an associate circuit judge, hearing violations of municipal ordinances, shall be directed to the city marshal, chief of police, or any other police officer of the municipality, or to the sheriff of the county. The warrants shall be executed by the marshal, chief of police, police officer or sheriff at any place within the limits of the county, and not elsewhere, unless the warrants are endorsed in the manner provided for warrants in criminal cases, and, when so endorsed, shall be served in other counties, as provided for in warrants in criminal cases.

The Honorable Denny J. Merideth III
Page 2

We addressed a similar statute in Attorney General Opinion 75-1966, a copy of which is attached. As we stated in that opinion the wording of the statute is clear and municipal police officers can serve and execute municipal warrants within the limits of county in which the municipality is located.

Very truly yours,



JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P.O. Box 899
(573) 751-3321

January 6, 2000

OPINION LETTER NO. 114-2000

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Section 116.332, RSMo, of the sufficiency as to form of an initiative petition relating to a proposed change to Section 571.030, RSMo. A copy of the initiative petition that you submitted to this office on December 27, 1999, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,


JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P.O. Box 899
(573) 751-3321

January 6, 2000

OPINION LETTER NO. 115-2000

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Section 116.332, RSMo, of the sufficiency as to form of an initiative petition relating to a proposed change to Section 571.080, RSMo. A copy of the initiative petition that you submitted to this office on December 27, 1999, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeremiah W. Nixon", written over a horizontal line.

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure



ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

JEFFERSON CITY
65102

P.O. Box 899
(573) 751-3321

January 6, 2000

OPINION LETTER NO. 116-2000

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Section 116.332, RSMo, of the sufficiency as to form of an initiative petition relating to a proposed constitutional amendment revising Article I, § 23. A copy of the initiative petition that you submitted to this office on December 27, 1999, is attached for reference.

We conclude that the petition form must be rejected because the "notice" language contained on the reverse side of the petition is legally inaccurate and, as such, could mislead those who consider signing the petition. The notice purports to advise petition signers that the proposed constitutional amendment, if enacted, could "change, repeal, or modify by implication" a particular statute. While a constitutional amendment can impact existing statutes, as a matter of law no constitutional amendment could have the impact set forth in the notice found on the proposed petition form.

Because of our rejection of the form of the petition for the reason stated above, we have not reviewed the petition to determine if additional deficiencies exist. Pursuant to Section 116.332.3, RSMo, the Secretary of State is authorized to review this opinion and "make a final decision as to the approval or rejection of the form of the petition."

Very truly yours,


JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ELECTIONS:
SALES TAX:
TELEPHONE TAX:

The funding by a sales tax of 1/2 percent for
an enhanced 9-1-1 and central dispatch system,
when approved by the voters pursuant to the

ballot question listed herein, although an election irregularity, in the absence of a
timely election challenge, is valid.

September 7, 2000

OPINION NO. 208-2000

James G. Spencer
Prosecuting Attorney
Sullivan County, Missouri
103 North Market, P.O. Box 69
Milan, MO 63556-0069

Dear Mr. Spencer:

You have submitted the following question to this office for reply:

Do the provisions of Section 190.300 through
190.340 RSMo apply to an "Enhanced 9-1-1 and Central
Dispatch System" which is funded by a 1/2 percent sales tax
authorized by and enacted pursuant to Section 67.547
RSMo?

In the information that you supplied you provided the history of an election held
in 1996. For purposes of this opinion we assume that the information you supplied is
accurate.

On June 11, 1996 the Sullivan County Commission authorized the placement on
the August primary ballot the following proposition:

Shall the County of Sullivan impose a county-wide
sales tax of 1/2 percent to be used for the implementation
and operation of a county-wide Enhanced 9-1-1 and central
dispatch system?

YES

NO

When the County Commission authorized the election, it did so by reference to Section 67.547 RSMo. That section provides in part:

1. In addition to the tax authorized by section 67.505, any county may, by a majority vote of its governing body, impose an additional county sales tax on all sales which are subject to taxation The tax authorized by this section shall be in addition to any and all other sales tax allowed by law; except that no ordinance or order imposing a sales tax under the provisions of this section shall be effective unless the governing body of the county submits to the voters of the county, at a county or state general, primary or special election, a proposal to authorize the governing body of the county to impose such tax.

2. The ballot of submission shall contain, but need not be limited to the following language:

Shall the county of (county's name) impose a countywide sales tax of (insert rate) percent?

☐ Yes

☐ No

If you are in favor of the question, place an "X" in the box opposite "Yes". If you are opposed to the question, place an "X" in the box opposite "No".

If a majority of the votes cast on the proposal by the qualified voters voting thereon are in favor of the proposal, then the ordinance or order and any amendments thereto shall be in effect. If a majority of the votes cast by the qualified voters voting are opposed to the proposal, then the governing body of the county shall have no power to impose the sales tax as herein authorized unless and until the governing body of the county submits another proposal to authorize the governing body of the county to impose the sales tax under the provisions of this section and such proposal is approved by a majority of the qualified voters voting thereon.

When the County Commission authorized the tax it stated that it was submitting to the voters the question whether a 1/2 percent sales tax should be imposed to "provide for the establishment and on-going operational cost of and (sic) Enhanced 9-1-1 emergency telephone service." The ballot language was identical to that authorized by the County Commission.

Since the time the County Commission adopted the resolution some provisions of Sections 190.300 - 190.340 have been changed. It is, therefore, necessary to examine those provisions in effect when the County Commission authorized the election.

Section 190.305 RSMo 1994 authorized a tax levy for an emergency telephone service in an amount not to exceed fifteen percent of the tariff local service rate. That section had other provisions not relevant to the discussion herein. Section 190.320 RSMo 1994 has not changed. It provides:

Before any governing body may establish emergency telephone service and impose an emergency telephone tax under the provisions of sections 190.300 to 190.320, it shall submit a proposal to its voters for the approval of such service and such tax. The ballot of submission shall contain, but need not be limited to, the following language:

May the (City, County) of establish an emergency telephone service and impose a telephone tax to finance such service?

☐ Yes ☐ No

The initial tax imposed shall be

(Here the governing body in 25 words or less shall describe the tax per telephone per year or any other wording which will give the voter an approximation of what the tax will cost the taxpayer.)

If a majority of the votes cast on the proposal by the qualified voters voting thereon are in favor of the proposal, then the governing body may establish the service and

impose the tax allowed by the provisions of sections 190.300 to 190.320. If a majority of the votes cast on the proposal by the qualified voters voting thereon are opposed to the proposal, then the governing body submitting the proposal shall not be allowed to implement the provisions of sections 190.300 to 190.320 until it has again submitted such proposal to its qualified voters and a majority of the votes cast are in favor of the proposal.

It is clear that the ballot language utilized in 1996 did not follow the recommended language of either Section 67.547 RSMo or Section 190.320 RSMo. Apparently, the County Commission took the recommended language from Section 67.547 RSMo and added the tail "to be used for the implementation and operation of a county-wide Enhanced 9-1-1 and central dispatch system."

Sections 190.335 and 190.337 RSMo 1994 apply to central dispatch for emergency services that can be adopted in lieu of the tax levy authorized under Section 109.305. In Section 190.335 RSMo 1994 a county commission may impose a tax levy for central dispatching of emergency services of fire protection, law enforcement, and ambulance services "in lieu of the tax levy authorized under section 190.305." Such a tax levy is subject to approval of the voters with the submission to be "in substantially the following form:"

Shall the county of (insert name of county) impose a countywide sales tax of (insert rate of percent) percent for the purpose of providing central dispatching of fire protection, emergency ambulance service, including emergency telephone services, and other emergency services?

☐ Yes

☐ No

The question you have asked can be stated whether the election in 1996 of a ballot measure that does not comport to the statutory language nevertheless authorize the imposition of a tax to be used solely for an enhanced 9-1-1 emergency number and central dispatch system. There is no doubt that the language utilized for the election in 1996 did not follow statutory mandates and, therefore, there was an "election irregularity" as contemplated in Section 115.593 RSMo 1994. However, such an irregularity must be "of sufficient magnitude to cast doubt on the validity of the initial

election." Overturning elections because of irregularities are to be utilized sparingly. Gerrard v. Board of Election Commissioners, 913 S.W.2d 88 (Mo. App. 1995).

Any election challenge has to be filed not later than thirty days after the official announcement of the results. See Section 115.577 RSMo 1994. As no such contest was filed as provided in Section 115.575 RSMo 1994, then the election results remain valid. Only election contests authorized by statute can be maintained. Felker v. City of Sikeston, 334 S.W.2d 754 (Mo. App. 1960).

The power to tax for a county or a political subdivision must be based upon specific or clearly implied authority from the general assembly. State ex rel. Goldberg v. Barber & Sons Tobacco, Inc., 649 S.W.2d 859 (Mo. banc 1983). That authority has been conveyed to the county as set forth above.

In State v. County Commission of Johnson County, 918 S.W.2d 252 (Mo. banc 1996) the court was faced with a similar issue. The plaintiffs sought to invalidate a sales tax passed thirteen years previous to the initiation of the suit, claiming that the ballot language deviated from the statutory language for such a sales tax. The language in the ballot substituted the word "may" for the word "shall" and authorized a maximum rate of tax but not an exact amount of tax. Johnson County, *supra* at 255. However, because the suit was in effect a challenge to the decision and it was commenced beyond thirty days after the election, the court rejected the suit and quoted the Missouri Supreme Court in Beatty v. Metropolitan Sewer District, 700 S.W.2d 831, 838 (Mo. banc 1985), wherein it stated "The wording of the proposition on a ballot and the propriety of the notice of election are issues cognizable only in an election contest." Accordingly, it would be inappropriate to challenge the authorization of the 1/2 percent sales tax for enhanced 9-1-1 and central dispatch service four years after the election.

CONCLUSION

The funding by a sales tax of 1/2 percent for an enhanced 9-1-1 and central dispatch system, when approved by the voters pursuant to the ballot question listed

James G. Spencer
Page 6

herein, although an election irregularity, in the absence of a timely election challenge, is valid.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Jay Nixon", written over a horizontal line.

JEREMIAH W. (JAY) NIXON
Attorney General



ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

JEFFERSON CITY
65102

P.O. Box 899
(573) 751-3321

January 24, 2000

OPINION LETTER NO. 210-2000

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Section 116.332, RSMo, for sufficiency as to form of an initiative petition relating to a proposed law amending Section 217.690, RSMo. A copy of the initiative petition that you submitted to this office on January 14, 2000, is attached for reference.

We conclude that the petition must be rejected as to form. In 1999, §116.040, was amended and the notice to be given petition signers changed. This notice provision now reads: "It is a class A misdemeanor punishable, notwithstanding the provisions of section 560.021, RSMo, to the contrary, for a term of imprisonment not to exceed one year in the county jail or a fine not to exceed ten thousand dollars or both, for anyone to sign any initiative petition with any name other than his or her own, or knowingly to sign his or her name more than once for the same measure for the same election, or to sign a petition when such person knows he or she is not a registered voter." The petition form submitted does not contain this new language. There are numerous additional variations between the form submitted and the version of the form contained in the new law.

Because of our rejection of the form of the petition for the reason stated above, we have not reviewed the petition to determine if additional deficiencies exist. Since our review is mandated by statute, no action we take with respect to such review should be construed as an opinion concerning the substance of the petition or as the expression of any view respecting the objectives of the petition's proponents.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jay Nixon", written over a horizontal line.

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P.O. Box 899
(573) 751-3321

January 24, 2000

OPINION LETTER NO. 212-2000

The Honorable Claire C. McCaskill
Missouri State Auditor
State Capitol Building
Jefferson City, MO 65101

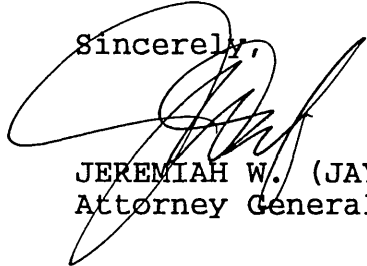
Dear Auditor McCaskill:

By letter dated January 14, 2000, you have submitted a fiscal note and fiscal note summary prepared pursuant to Section 116.175, RSMo, concerning the initiative petition proposal to amend Section 571.030, RSMo. The fiscal note summary which you submitted is as follows:

There appears to be no direct fiscal impact on state and local governments. The indirect fiscal impact on state and local governments, if any, is unknown.

Pursuant to Section 116.175, we approve the legal content and form of the fiscal note summary. Since our review of the fiscal note summary is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Sincerely,


JEREMIAH W. (JAY) NIXON
Attorney General



ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

JEFFERSON CITY
65102

P.O. Box 899
(573) 751-3321

January 24, 2000

OPINION LETTER NO. 214-2000

The Honorable Claire C. McCaskill
Missouri State Auditor
State Capitol Building
Jefferson City, MO 65101

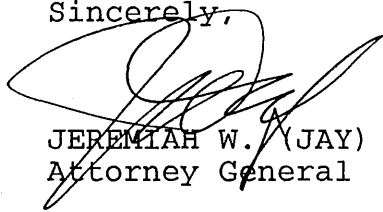
Dear Auditor McCaskill:

By letter dated January 24, 2000, you have submitted a fiscal note and fiscal note summary prepared pursuant to Section 116.175, RSMo, concerning the initiative petition proposal to amend Section 571.080, RSMo. The fiscal note summary which you submitted is as follows:

The indirect fiscal impact on state and local governments, if any, is unknown. The estimated fiscal impact on local governments as a result of persons transferring concealable firearms without a permit is a loss of permit fees of \$1,035,000 annually.

Pursuant to Section 116.175, we approve the legal content and form of the fiscal note summary. Since our review of the fiscal note summary is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Sincerely,



JEREMIAH W. (JAY) NIXON
Attorney General



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P.O. Box 899
(573) 751-3321

January 28, 2000

OPINION LETTER NO. 215-2000

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

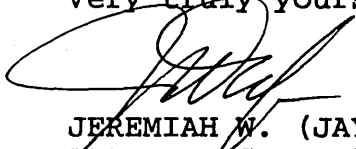
Dear Secretary Cook:

This opinion letter is in response to your request for our review under Section 116.332, RSMo, of the sufficiency as to form of an initiative petition relating to a proposed constitutional amendment concerning rail passenger service. A copy of the initiative petition that you submitted to this office on January 20, 2000, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,


JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure



ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

JEFFERSON CITY
65102

P.O. Box 899
(573) 751-3321

January 28, 2000

OPINION LETTER NO. 216-2000

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Section 116.332, RSMo, of the sufficiency as to form of an initiative petition relating to a proposed constitutional amendment concerning technology parks. A copy of the initiative petition that you submitted to this office on January 20, 2000, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jay Nixon", written over a horizontal line.

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure



ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

JEFFERSON CITY
65102

P.O. Box 899
(573) 751-3321

January 28, 2000

OPINION LETTER NO. 217-2000

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

On January 20, 2000, you submitted to us a summary statement prepared pursuant to Section 116.334, RSMo Supp. The summary statement which you have submitted is as follows:

Shall Section 571.080 of the Missouri Revised Statutes be repealed in its entirety so that it is no longer a crime in Missouri to transfer a concealable firearm without a permit?

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Sincerely,

A handwritten signature in black ink, appearing to read "Jay Nixon", written over a large, stylized circular flourish.

JEREMIAH W. (JAY) NIXON
Attorney General



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P.O. Box 899
(573) 751-3321

February 4, 2000

OPINION LETTER NO. 219-2000

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Section 116.332, RSMo, of the sufficiency as to form of an initiative petition relating to a proposed constitutional amendment revising Article X and concerning taxation of electricity. A copy of the initiative petition that you submitted to this office on January 25, 1999, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Jay Nixon", written over a circular embossed seal.

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P.O. Box 899
(573) 751-3321

February 4, 2000

OPINION LETTER NO. 220-2000

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

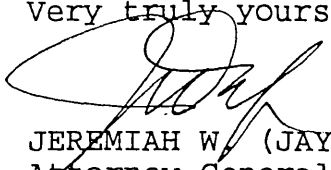
Dear Secretary Cook:

This opinion letter is in response to your request for our review under Section 116.332, RSMo, of the sufficiency as to form of an initiative petition relating to a proposed constitutional amendment revising Article X and concerning taxation of electricity and natural gas. A copy of the initiative petition that you submitted to this office on January 25, 1999, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,


JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure



ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

JEFFERSON CITY
65102

P.O. Box 899
(573) 751-3321

January 28, 2000

OPINION LETTER NO. 221-2000

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

You have submitted to us a summary statement prepared pursuant to Section 116.334, RSMo Supp. The summary statement which you have submitted is as follows:

Shall section 571.030 be amended to make it lawful to carry weapons readily capable of lethal use, concealed upon or about a person, to carry such weapons into any church, place of worship, school, election precinct, building owned or occupied by any government agency, or place of public assemblage, to otherwise use such weapons in defense of self or others, and to no longer make special provision for use of such weapons by law enforcement or corrections personnel, members of the armed forces, national guard or judiciary, persons executing process, federal and state probation officers and corporate security advisors?

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jeremiah W. Nixon", is written over a horizontal line. Below the signature, the name and title of the signatory are printed.

JEREMIAH W. (JAY) NIXON
Attorney General

BOARD OF COUNTY VISITORS:
COUNTY OFFICIALS:
LEGAL EXPENSE FUND:

Members of the Board of County
Visitors are not immune from liability
for their acts as Board members because
they are volunteers; however, they have

available defenses such as the public duty doctrine and official immunity. Board
members are not state officials and are not covered by the provisions of the State
Legal Expense Fund.

September 7, 2000

OPINION NO. 224-2000

The Honorable Douglas E. Long, Jr.
Presiding Judge, Circuit Court
Twenty-Fifth Judicial Circuit of Missouri
Division One
301 Historic 66 East, Suite 318
Waynesville, MO 65583

Dear Judge Long:

You have submitted a question to this office whether members of the Board of
County Visitors, who serve with no compensation, may be legally responsible for their
actions as Board members. We have interpreted your letter to also ask whether the
Board members, if sued for their acts as Board members, are covered by the Legal
Expense Fund.

The Board of County Visitors is established by statute. See Sections 221.320-
.350 RSMo 1994. The members are appointed by the presiding circuit court judge, or
by other judges if determined by local court rule, for terms of three years, whose
responsibilities include inspecting all corrective institutions supported by the county
and who serve without compensation. Section 221.320 RSMo 1994.

Section 221.340 RSMo establishes the duties of the Board. That statute
provides:

It shall be the duty of such board of visitors, by
personal visitation or otherwise, to keep themselves fully
advised of the conditions and management of all corrective
institutions, supported wholly or in part by county or

municipal taxation, or which are under county or municipal control, and especially the county jails, almshouses and municipal prisons. They shall examine every department of each institution, and shall ascertain its condition as to effective and economical administration, the cleanliness, discipline and comfort of its inmates and other respects, and at least once in every three months all of said institutions shall be visited by said board or a committee of its members. In case the said board or one of its committees shall find any state of things in any institution, which in their opinion shall be injurious to the county or to the inmates of the institution, or which is contrary to good order and public policy, it shall be their duty to address a memorial to the county commission, or other officials having jurisdiction, in which memorial they shall set forth the facts observed and shall suggest such remedies as in their judgment may be necessary.

The Board is also required to prepare a yearly report under the provisions of Section 221.350 RSMo. It provides:

The board of county visitors each year shall prepare a full report of their proceedings during the year, with such recommendations as they may deem advisable, and shall file the same with the director of the division of family services of the department of social services on or before the first day of November of each year. Whenever the board of county visitors shall present a memorial or report to the county commission or to the judge of the circuit court, they shall, at the same time, transmit a copy of the same to the director of the division of family services and they may at any time call upon him for advice and assistance in the performance of their duties. The director of the division of family services shall furnish each board of county visitors with such stationery, blanks and postage stamps as said board of county visitors may need to make the report prescribed by this section to the division of family services.

The fact that the Board members are not compensated for their work does not, by itself, absolve them of potential liability. It has been stated that one who acts, even though gratuitously, assumes the duty to act carefully. See, e.g., Wolfmeyer v. Otis Elevator Co., 262 S.W.2d 18 (Mo. 1953).

However, the duties of the Board of County Visitors as set forth in this statute are duties owed to the public and not to an individual member of the public. In Sherrill v. Wilson, 653 S.W.2d 661 (Mo. banc 1983) the court stated that when the duty of a governmental employee is a duty to the public, there is no tort liability for negligence. Sherrill, supra at 669. The Missouri Supreme Court has stated "A public employee may not be held civilly liable for breach of a duty owed to the general public, as distinguished from a duty owed to particular individuals." Green v. Danison, 738 S.W.2d 861, 866 (Mo. banc 1987). When duties imposed are intended to benefit the government, the public duty doctrine is applicable. State ex rel. Twiehaus v. Adolf, 706 S.W.2d 443, 445 (Mo. banc 1986).

We offer no opinion under what circumstances a submissible case may be made against members of the Board of County Visitors, or against the Board itself, in that the question you presented did not specify what type of cause of action was contemplated. In addition to the public duty doctrine the defense of official immunity (immunity for discretionary acts) may be available. Bates v. State, 664 S.W.2d 563 (Mo. App. 1983). If a claim is made against a member of the Board, or the Board itself, however, the Legal Expense Fund is unavailable to whichever defendants may be named.

Section 105.711 RSMo 1999 Supp. created the State Legal Expense Fund (hereinafter LEF) and the categories of individuals covered by that fund are identified in subparagraphs 2, 3 and 4 of its second paragraph. Those individuals include any officer or employee of the State of Missouri or any agency of the state, including elected officials, appointees, members of boards and commissions and members of the national guard, staff of the juvenile division of any judicial circuit and to a variety of health care providers under numerous circumstances not relevant to your inquiry. See Section 105.711.2 RSMo 1999 Supp. Nowhere within the LEF provisions is there coverage for individuals appointed to a board such as the Board of County Visitors.

In Cates v. Webster, 727 S.W.2d 901 (Mo. banc 1987) the question was presented whether bailiffs of circuit courts were entitled to LEF coverage. Bailiffs receive their compensation from the county. As such they are not employees of the

The Honorable Douglas E. Long, Jr.
Page 4

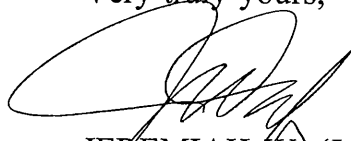
state, even though appointed by a state official (e.g., a judge of the judicial circuit), and, therefore, bailiffs are not within the coverage of the LEF. Cates, supra.

This office has stated that county officers who are not state employees are not within the coverage of the LEF. Opinion Number 34-85, a copy of which is attached. By like reasoning members of the Board of County Visitors would not come within the purview of the LEF.

CONCLUSION

Members of the Board of County Visitors are not immune from liability for their acts as Board members because they are volunteers; however, they have available defenses such as the public duty doctrine and official immunity. Board members are not state officials and are not covered by the provisions of the State Legal Expense Fund.

Very truly yours,



JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure



ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

JEFFERSON CITY
65102

P.O. Box 899
(573) 751-3321

February 15, 2000

OPINION LETTER NO. 225-2000

The Honorable May E. Scheve
Representative District 98
State Capitol Building, Room 401
Jefferson City, Missouri 65101

Dear Representative Scheve:

This opinion is in response to your question:

Does the use of bill validator acceptors for the exchange of cash for electronic tokens for electronic gaming device wagering violate the cashless wagering provisions of Sections 313.805(13) and Section 313.817(3), RSMo 1994?

Section 313.805(13) RSMo provides:

The commission shall have the following powers and shall promulgate rules and regulations to implement sections 313.800 to 313.850:

* * *

(13) To require all licensees of gambling game operations to use a cashless wagering system whereby all players' money is converted to tokens, electronic cards, or chips which only can be used for wagering on the excursion gambling boats;

Section 313.817.3 RSMo provides:

Wagering shall not be conducted with money or other negotiable currency. The licensee shall exchange the money of each wagerer for tokens, chips, or other forms of credit to be wagered on the gambling games. The licensee shall exchange the gambling tokens, chips, or other forms of wagering credit for money at the request of the wagerer.

If the statute is unambiguous there is no need for interpretation or construction in order to determine its true meaning. *State ex rel. School District of Kansas City v. Young*, 519 S.W.2d 328 (Mo. App.1975).

To determine whether a statute is clear and unambiguous, this court looks to whether the language is plain and clear to a person of ordinary intelligence. The court will only look past the plain and ordinary meaning of a statute when the language is ambiguous or leads to an illogical result.

Russell v. Missouri State Employees Retirement System, 4 S.W.3d 554 (Mo. App. 1999).

Neither "cashless wagering" nor "other forms of credit" are defined by statute. Each of the terms describes a technical subject concerning the operation of riverboat gambling facilities. As such the terms used in the two statutes in question are not plain and clear to a person of ordinary intelligence, thus those terms are ambiguous and need interpretation.

Because an agency charged with its administration of a statute has more technical expertise in the particular area, the law gives deference to the interpretation and construction of a statute by that agency. *Foremost-McKession, Inc. v. Davis*, 488 S.W. 2d 193 (Mo. banc 1972).

The Missouri Gaming Commission is charged with administering the laws concerning licensed riverboat gambling facilities. Section 313.004.4 RSMo.

The Missouri Gaming Commission promulgated 11 C.S.R. 45-5.210(1)(A) which provides that:

Electronic gaming devises, shall -

(A) Be cashless in operation, and as such, must accept only electronic cards or tokens as wagers:

This provides the only definition in this area.

Your question concerning the use of a bill validator acceptor for the exchange of cash for electronic token is a question of interpretation of ambiguous statutes. Great weight should be given to the interpretation given by the administrative agency charged with its administration, the Missouri Gaming Commission. Current regulations of the Gaming Commission interpret the statutes in a way that requires your question to be answered in the negative.¹

Conclusion

Section 313.805(13) and Section 313.817(3), concerning whether the use of bill validator acceptors for the exchange of cash for electronic tokens for electronic gaming device wagering, are ambiguous, therefore, deference should be given to the Missouri Gaming Commission for the interpretation and construction of those statutes.

Very truly yours,



JEREMIAH W. (JAY) NIXON
Attorney General

¹ Because the statutes are ambiguous on their face, and because the law gives great deference to the Gaming Commission as the agency charged with administering this area of the law, a court would likely uphold an alternative regulatory position taken by the Gaming Commission.



ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

JEFFERSON CITY
65102

P.O. Box 899
(573) 751-3321

February 17, 2000

OPINION LETTER NO. 226-2000

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

You have submitted to us a summary statement prepared pursuant to Section 116.334, RSMo Supp. The summary statement which you have submitted is as follows:

Shall Article IV, Section 30 of the Missouri Constitution be amended by adding a new section providing that one tenth of all monies collected by the State of Missouri for transportation purposes shall be applied towards Rail Passenger Service development and operations?

See our Opinion Letter No. 215-2000 (attached), approving the form of the related petition.

Pursuant to Section 116.334; we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Sincerely,

A handwritten signature in black ink, appearing to read "Jay Nixon", written over a horizontal line.

JEREMIAH W. (JAY) NIXON
Attorney General



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P.O. Box 899
(573) 751-3321

February 17, 2000

OPINION LETTER NO. 227-2000

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

You have submitted to us a summary statement prepared pursuant to Section 116.334, RSMo Supp. The summary statement which you have submitted is as follows:

Shall Article IV, Section 36(a) of the Missouri Constitution be amended to require that the department of economic development administer programs relating to technology development and that one tenth of all monies approved by the Governor and state legislature for the economic development department will be applied towards the development of technology parks in Missouri on a yearly basis?

See our Opinion Letter No. 216-2000 (attached), approving the form of the related petition.

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Sincerely,

A handwritten signature in black ink, appearing to read "Jay Nixon", written over a horizontal line.

JEREMIAH W. (JAY) NIXON
Attorney General



ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

JEFFERSON CITY
65102

P.O. Box 899
(573) 751-3321

February 18, 2000

OPINION LETTER NO. 228-2000

The Honorable Claire C. McCaskill
Missouri State Auditor
State Capitol Building
Jefferson City, MO 65101

Dear Auditor McCaskill:

You have submitted to us a fiscal note and fiscal note summary prepared pursuant to Section 116.175, RSMo, concerning a proposed constitutional amendment regarding technology parks. The fiscal note summary that you submitted is as follows:

This proposal would reallocate approximately \$13,264,562 annually from the programs administered by the Department of Economic Development towards the development of Technology Parks in Missouri. The amount reallocated may increase or decrease in future years.

Pursuant to Section 116.175, we approve the legal content and form of the fiscal note summary. Since our review of the fiscal note summary is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeremiah W. Nixon", written over the typed name.

JEREMIAH W. (JAY) NIXON
Attorney General



ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

JEFFERSON CITY
65102

P.O. Box 899
(573) 751-3321

February 18, 2000

OPINION LETTER NO. 229-2000

The Honorable Claire C. McCaskill
Missouri State Auditor
State Capitol Building
Jefferson City, MO 65101

Dear Auditor McCaskill:

You have submitted to us a fiscal note and fiscal note summary prepared pursuant to Section 116.175, RSMo, concerning a proposed constitutional amendment regarding rail passenger service. The fiscal note summary that you submitted is as follows:

This proposal would reallocate approximately \$116, 828,237 annually from revenues collected by the State of Missouri for transportation purposes towards Rail Passenger Service development and operations. The amount reallocated may increase or decrease in future years.

Pursuant to Section 116.175, we approve the legal content and form of the fiscal note summary. Since our review of the fiscal note summary is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Sincerely,

A handwritten signature in black ink, appearing to read "Jay Nixon", written over a horizontal line.

JEREMIAH W. (JAY) NIXON
Attorney General



ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

JEFFERSON CITY
65102

P.O. Box 899
(573) 751-3321

February 18, 2000

OPINION LETTER NO. 230-2000

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

You have submitted to us a summary statement prepared pursuant to Section 116.334, RSMo Supp. The summary statement which you have submitted is as follows:

Shall the Missouri Constitution be amended to: prohibit local tax on electricity gross receipts, local sales and use taxes on electricity, specified property taxes, and local electricity franchise fees; require the general assembly to impose replacement taxes, with rates limited to produce revenues equivalent to year 2000 revenues which cannot be increased without voter approval, based upon kilowatt hours of electricity delivered or used; and become effective no earlier than January 1, 2002 once a law is enacted allowing retail customers to choose their electricity supplier?

See our Opinion Letter No. 219-2000 (attached), approving the form of the related petition.

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeremiah W. Nixon", written over a horizontal line.

JEREMIAH W. (JAY) NIXON
Attorney General



ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

JEFFERSON CITY
65102

P.O. Box 899
(573) 751-3321

February 18, 2000

OPINION LETTER NO. 231-2000

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

You have submitted to us a summary statement prepared pursuant to Section 116.334, RSMo Supp. The summary statement which you have submitted is as follows:

Shall the Missouri Constitution be amended to: prohibit local tax on electricity and natural gas gross receipts, local sales and use taxes on electricity and natural gas, specified property taxes, and local electricity and natural gas franchise fees; require the general assembly to impose replacement taxes, with rates limited to produce revenues equivalent to year 2000 revenues which cannot be increased without voter approval, based upon kilowatt hours of electricity or therms of natural gas delivered or used; and become effective no earlier than January 1, 2002 once a law is enacted allowing retail customers to choose their electricity supplier?

See our Opinion Letter No. 220-2000 (attached), approving the form of the related petition.

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Sincerely,

A handwritten signature in black ink, appearing to read "Jay Nixon", written over a circular embossed seal.

JEREMIAH W. (JAY) NIXON
Attorney General



ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

JEFFERSON CITY
65102

P.O. Box 899
(573) 751-3321

February 24, 2000

OPINION LETTER NO. 234-2000

The Honorable Claire C. McCaskill
Missouri State Auditor
State Capitol Building
Jefferson City, MO 65101

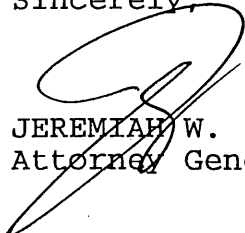
Dear Auditor McCaskill:

You have submitted to us a fiscal note and fiscal note summary prepared pursuant to Section 116.175, RSMo, concerning a proposed constitutional amendment regarding the taxation of electricity. The fiscal note summary that you submitted is as follows:

Revenues produced by the General Assembly's enactment of electricity replacement taxes are intended to be equal or less than local electricity tax revenues produced in calendar year 2000. State costs to implement this proposal are minimal; local costs are unknown. Any increase in replacement tax rates must be voter-approved.

Pursuant to Section 116.175, we approve the legal content and form of the fiscal note summary. Since our review of the fiscal note summary is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Sincerely,



JEREMIAH W. (JAY) NIXON
Attorney General

BOARD OF ALDERMEN:
CITIES, TOWNS AND VILLAGES:
FOURTH CLASS CITIES:
PERSONNEL RECORDS:

The board of aldermen may review the contents of a personnel file of a city's employee if such is necessary to care, manage or control the city. The

authority may be delegated through resolution or ordinance to one or more members of the board.

September 7, 2000

OPINION NO. 235-2000

The Honorable Jim Howerton
Representative, District 102
State Capitol Building
Jefferson City, MO 65101

Dear Representative Howerton:

You have submitted the following question:

Does a member of the board of aldermen have the right to pull and view the personnel file of an employee?

As part of your request you have included information indicating that the question has arisen in the context of whether an alderman of the city of Windsor, Missouri, as a fourth class city, can review an employee's personnel file to decide whether to promote or discipline that employee.

Chapter 610 RSMo is popularly known as the Sunshine Law. It is the stated policy of Missouri that the law be construed liberally and exceptions to "openness" be construed strictly. Section 610.011 RSMo 1994. However, there are definitive exceptions to the openness of records. Two of those exceptions deal specifically with personnel records. Section 610.021(3) RSMo 1999 Supp. provides that a public governmental body may close a meeting, record or vote if they relate to "Hiring, firing, disciplining or promoting of particular employees . . . when personal information about the employee is discussed or recorded." Section 610.021(13) RSMo 1999 Supp. provides that a public governmental body may close a meeting, record, or vote if they relate to "Individually identifiable personnel records, performance ratings

or records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries and lengths of service of officers and employees of public agencies once they are employed as such."

Personnel records may be closed under Chapter 610 RSMo. When a public governmental body chooses to close such records, those records remain closed to everyone unless the body either decides to open the records or a court under Section 610.027 RSMo 1999 Supp. orders the records to be disclosed.

The issue presented is whether a member of a public governmental body has the right to review closed records of that public governmental body. The mayor and board of aldermen of fourth class cities "have the care, management and control of the city." Section 79.110 RSMo. Therefore, if the board of aldermen as a group needs to review a personnel file in order to care, manage or control a city, the board may review that file. See Attorney General Opinion No. 106-96 for the proposition that a mayor may look at certain closed records of criminal proceedings because the mayor has responsibilities in enforcing laws and ordinances and can be considered a person from a "law enforcement agency."

Section 79.350 RSMo 1994 provides:

The mayor or board of aldermen shall have power, as often as he or they may deem it necessary, to require any officer of the city to exhibit his accounts or other papers or records, and to make report to the board of aldermen, in writing, touching any matter relating to his office.

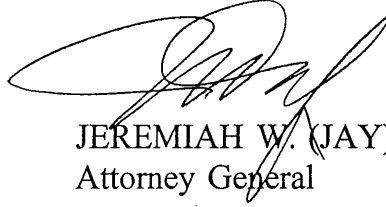
It is clear that either the mayor or the board of aldermen as a body may review all records of the city including personnel records. Pursuant to appropriate resolution or ordinance that authority of the board may be delegated to a member or members of the board. Of course, any such review must be in their capacity of a board member and the rights of privacy of the employees must be preserved.

The Honorable Jim Howerton
Page 3

CONCLUSION

It is the conclusion of this office that the board of aldermen may review the contents of a personnel file of a city's employee if such is necessary to care, manage, or control the city. The authority may be delegated through resolution or ordinance to one or more members of the board.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jay Nixon", is written over the printed name and title.

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure



ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

JEFFERSON CITY
65102

P.O. Box 899
(573) 751-3321

February 24, 2000

OPINION LETTER NO. 238-2000

The Honorable Claire C. McCaskill
Missouri State Auditor
State Capitol Building
Jefferson City, MO 65101

Dear Auditor McCaskill:

You have submitted to us a fiscal note and fiscal note summary prepared pursuant to Section 116.175, RSMo, concerning a proposed constitutional amendment regarding the taxation of electricity and natural gas. The fiscal note summary that you submitted is as follows:

Total revenues produced by enactment of electricity and natural gas replacement taxes are intended to be equal or less than such local tax revenues produced in calendar year 2000. State costs to implement this proposal are minimal; local costs are unknown. Increases in replacement tax rates must be voter-approved.

Pursuant to Section 116.175, we approve the legal content and form of the fiscal note summary. Since our review of the fiscal note summary is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Sincerely,

JEREMIAH W. (JAY) NIXON
Attorney General



ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

JEFFERSON CITY

65102

March 22, 2000

P.O. Box 899
(573) 751-3321

OPINION LETTER NO. 239-2000

Claire C. McCaskill
State Auditor's Office
224 State Capitol
Jefferson City, MO 65101

Dear Ms. McCaskill:

You have asked the following question:

May a third class city establish a benefit package whereby city officers and councilmen receive \$10,000 upon their separation from the city?

In your request for an opinion you state that the city of Wellston, a third class city, has adopted by ordinance a benefits package for city officials (members of the city council, mayor, and treasurer) which includes a payment of \$10,000 when the individual ceases to serve as a city official if the city official has served for at least ten consecutive years and did not cease to be a city official for cause.

Within your request you raise questions whether this ordinance violates either Article VII, Section 13, or Article III, Section 39(3) of the Missouri Constitution. A question is also raised whether Section 70.615 RSMo prohibits this sort of benefits package.

Section 70.615 RSMo provides in pertinent part:

--After October 13, 1967, a political subdivision shall not commence coverage of its employees who are neither policemen nor firemen under another plan similar in purpose to this system, other than under this system, except


Claire C. McCaskill
Page 2

the federal Social Security Old Age, Survivors, and
Disability Insurance Program, as amended;

There are exceptions to this prohibition which are not relevant to the question you have raised. "This system" referenced in the statute is "Missouri Local Government Employees' Retirement System," also known as LAGERS.

This statute clearly proscribes the establishment of a pension plan other than LAGERS for city employees, except for firemen or policemen. This office has previously so concluded. See Attorney General Opinion Letter 23-1979 and Attorney General Opinion 128-1972, copies of which are attached. Because the benefits package for the city of Wellston violates Section 70.615 RSMo, it is unnecessary to address the constitutional issues raised in your request.

Very truly yours,



JEREMIAH W. (JAY) NIXON
Attorney General

Enclosures



ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

JEFFERSON CITY
65102

P.O. Box 899
(573) 751-3321

March 3, 2000

OPINION LETTER NO. 241-2000

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Section 116.332, RSMo, of the sufficiency as to form of an initiative petition relating to a proposed law regarding unidentified flying objects. A copy of the initiative petition that you submitted to this office on February 23, 2000, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,


JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

COLLECTOR:

DEPUTY COLLECTOR:

The chief deputy is not required to resign while running for the office of collector nor

is the chief deputy required to resign as chief deputy if elected collector between the election and assuming the office of collector.

June 5, 2000

OPINION NO. 245-2000

The Honorable Mark Hampton
Representative, District 147
State Capitol Building
Jefferson City, MO 65101

Dear Representative Hampton:

You have asked the following questions:

My County Collector has chosen not to seek re-election but her Chief Deputy has filed for that seat. The questions posed to me are as follows:

- Can the Chief Deputy remain in her position or does she need to resign now?
- If the Chief Deputy is successful in winning the nomination in the Primary election, can she remain in that position or does she need to resign?
- If the Chief Deputy is successful in winning the county collector's seat in the General election, can she remain in that position until she takes office?

The qualifications to serve as County Collector are set out generally in Section 52.010 RSMo 1994. The only qualification set out in that statute is that the collector must be a resident of the county from which he is elected.

In your letter you do not identify the county for which the question is addressed, but we assume that it is either Shannon or Texas County, both of which are third class counties, and most likely Texas County. Section 52.271 RSMo 1994 provides "The county collector in each county of the third class is entitled to employ deputies and assistants," and there is no restriction in that section about a deputy being

a candidate for office. Section 52.310 RSMo does place an additional obligation on collectors and their deputies and assistants. That section provides that "No collector or holder of public moneys, or any assistant or deputy of such holder or collector of public moneys, shall be eligible or appointed to any office of trust or profit until he shall have accounted for and paid over all sums of which he may be accountable."

Sections 105.452 RSMo 1994 and Section 105.454 RSMo 1999 Supp. identify prohibited acts by elected and appointed public officials. There is no prohibition from running for elected office while serving in an appointive one.

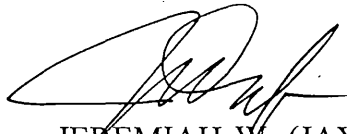
In reviewing the statutes we have found a prohibition of a deputy collector running for county treasurer. See Section 54.040 RSMo 1994. If the legislature intended to prohibit deputy collectors from running for the office of collector, it would have included such a prohibition. By specifying that deputy collectors may not run for county treasurer and making no mention forbidding deputy collectors from running for collector, the legislature did not intend to limit deputy collectors from running for collector. Parvey v. Humane Society of Missouri, 343 S.W.2d 678 (Mo. App. 1961).

This office takes no position whether an individual can fulfill the obligations as deputy collector while campaigning to be elected collector. We do believe that it is the responsibility of the current collector that the deputy collector fulfills the responsibilities of that position if that deputy chooses to run for office while holding that position.

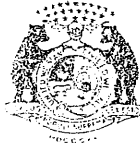
CONCLUSION

It is the opinion of this office that the chief deputy is not required to resign while running for the office of collector nor is the chief deputy required to resign as chief deputy if elected collector between the election and assuming the office of collector.

Very truly yours,



JEREMIAH W. (JAY) NIXON
Attorney General



ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

JEFFERSON CITY

65102

March 20, 2000

P.O. Box 899
(573) 751-3321

OPINION LETTER NO. 250-2000

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Section 116.332, RSMo, for sufficiency as to form of an initiative petition relating to a proposed law concerning mandatory minimum sentencing. A copy of the initiative petition that you submitted to this office on March 14, 2000, is attached for reference.

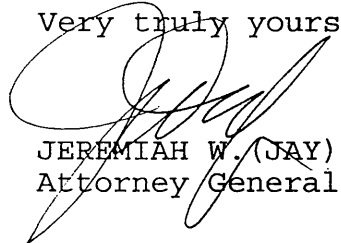
We conclude that the petition must be rejected because there exists defects in the form, including mistakes on the front and back pages of the form. On the front page the word "herself" is omitted in the fourth line of the paragraph beginning with the word "We" and the word "her" is omitted from the line that begins with the word "signed," in contravention of Section 116.040, RSMo 1999 Supp. The words "a Missouri registered voter and a resident of the State of Missouri" are added to the circulator's affidavit without statutory authority. The petition also includes "official ballot language" in violation of Section 116.334, RSMo 1999 Supp.

There are numerous substantive and clerical errors on the second page of the form. Among the errors we have found are the following: use of the word "classed" in line 1 of paragraph 2; the use of the word "purposed" in line 3 of paragraph 2; the use of the word "commitments" in line 1 of subparagraph 2(1); the addition of an apostrophe following the reference to section 588.018 in paragraph 1; the addition of the word "the" before the word "sentencing" in line 3 of paragraph 2; the omission of the word "to" after the word "guilty" in line 5 of paragraph 2; the omission of a comma in paragraph 4 after the word "served"; miscapitalization of "A" in line 5 of paragraph 2 and of "S" in line 1 of subparagraph 4(2); the use of a period instead of a colon in line 6 of paragraph 2; mistakes in numbering the

The Honorable Rebecca McDowell Cook
Page 2

paragraphs after the proposed deletion of paragraph 3; the duplication of the lettering in the subparagraphs of 6(3) resulting in two subparagraphs 6(3)(b)s; an opening bracket in the underscored provisions in line 3 immediately before the word "percent" with no closing bracket; and the inclusion of two paragraphs 7, with the second paragraph 7 including the language appearing to be deleted in the referenced paragraph 3.

Very truly yours,



JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure



ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

JEFFERSON CITY

65102

March 20, 2000

P.O. Box 899
(573) 751-3321

OPINION LETTER NO. 251-2000

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion is in response to your request for our review under Section 116.332, RSMo, for sufficiency as to form of an initiative petition relating to a proposed law concerning the state board of probation and parole. A copy of the initiative petition that you submitted to this office on March 14, 2000, is attached for reference.

We conclude that the petition must be rejected as to form because the petition omits reference to the city of St. Louis and, instead, references the city of Kansas City, in violation of Section 116.040, RSMo 1999 Supp. The petition also omits the word "proposed" immediately before the word "law" in the paragraph beginning with the word "We" and the words "or herself" in that same paragraph. The petition also adds the words "A Missouri registered voter and resident of the State of Missouri" immediately after the signature line for the circulator's affidavit. The petition also includes "official ballot language" in violation of Section 116.334, RSMo 1999 Supp.

Because of our rejection of the form of the petition for the reason stated above, we have not reviewed the petition to determine if additional deficiencies exist.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jay Nixon", written over a horizontal line.

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure



ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

JEFFERSON CITY
65102

P.O. Box 899
(573) 751-3321

March 20, 2000

OPINION LETTER NO. 252-2000

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

You have submitted to us a summary statement prepared pursuant to Section 116.334, RSMo Supp. The summary statement which you have submitted is as follows:

Shall Missouri statutes be amended to state that the year 2000 be proclaimed and observed as the Year of UFO Awareness; to contain a statement urging the U.S. Congress to convene open, comprehensive hearings in which government personnel are permitted to present sworn testimony regarding their personal knowledge of any UFO-related evidence given under immunity by waiver of any applicable security oath or agreement of nondisclosure; and to proclaim various statements regarding UFO as fact?

See our Opinion Letter No. 241-2000 (attached), approving the form of the related petition.

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jay Nixon", is written over a circular embossed seal. The seal is partially visible and contains the text "OFFICE OF THE ATTORNEY GENERAL" and "STATE OF MISSOURI".

JEREMIAH W. (JAY) NIXON
Attorney General



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P.O. Box 899
(573) 751-3321

March 20, 2000

OPINION LETTER NO. 253-2000

The Honorable Claire C. McCaskill
Missouri State Auditor
State Capitol Building
Jefferson City, MO 65101

Dear Auditor McCaskill:

By letter dated March 14, 2000, you submitted a fiscal note and fiscal note summary prepared pursuant to Section 116.175, RSMo, concerning an initiative petition proposal relating to unidentified flying objects. The fiscal note summary which you submitted is as follows:

The estimated fiscal impact of this proposed measure to state and local governments is unknown.

Pursuant to Section 116.175, we approve the legal content and form of the fiscal note summary. Since our review of the fiscal note summary is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Sincerely,

A handwritten signature in black ink, appearing to read "Jay Nixon", written over a circular stamp.

JEREMIAH W. (JAY) NIXON
Attorney General



ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

JEFFERSON CITY
65102

P.O. Box 899
(573) 751-3321

September 7, 2000

OPINION LETTER NO. 254-2000

Dwight K. Scroggins, Jr.
Prosecuting Attorney
Buchanan County, Missouri
Buchanan County Court House
St. Joseph, MO 64501

Dear Mr. Scroggins:

You have asked whether a city may purchase computer software for its municipal court with capital improvement sales tax money. For the reasons set forth below this office believes that it is improper to do so except in the circumstances described in this letter.

Section 94.577 RSMo 1999 Supp. authorizes certain municipalities to impose a one-eighth, one-fourth, three-eighths, or one-half of one percent sales tax for funding capital improvements, including the operation and maintenance of such improvements. Such a tax must be approved by the voters. A special trust fund must be established in which all revenue generated from the tax must be deposited and all such revenue shall be used solely for capital improvements, including the operation and maintenance of such capital improvements. See subsection 94.577.3 RSMo 1999 Supp.

It is clear that computer software is not itself a capital improvement. Software can be easily moved and replaced. Although put into the computer, it is not normally an integral part of a building. A capital improvement can be buildings, sidewalks, parking facilities and even "green ways." However, software of a computer is not, in and of itself, a capital improvement.

The next issue is whether computer software can be classified as the operation or maintenance of such improvements. Improvements have been defined as those

things firmly affixed to property that could not be removed without a complete dismantling. Hayslett v. Harnischfeger Corp., 815 F.Supp. 1294 at 1298 (W.D. Mo. 1993). An improvement has also been explained as something whose construction involved the expenditure of labor and money, land was made more useful and it was an essential component for the functioning of the item. James v. Union Election Co., 978 S.W.2d 372 (Mo. App. 1998). While computer software costs money, makes the computer more useful and is an essential component of the computer, it is not those things for a capital improvement. Therefore expenditures from sales tax money dedicated to capital improvements cannot be justified as an "operation" of a capital improvement.

While "maintenance" has been defined in other contexts, e.g., see, Sections 227.210 and 290.210(4) RSMo 1986, the legislature has provided no definition for the term as used in Section 94.577 RSMo Supp. Therefore, we must construe this word in the context of this section. The primary rule of statutory construction is to ascertain the intent of the legislature from the language used, to give effect to that intent if possible, and to consider the words used in their plain and ordinary meaning. Wolff Shoe Company v. Director of Revenue, 762 S.W.2d 29, 31 (Mo. banc 1988).

The language in Section 94.577 refers to the maintenance of the facilities and buildings constructed with revenues raised pursuant to that statute. The maintenance of those facilities and buildings would thus include any expenditures for the purposes of upkeep and to keep the facilities and building in a state of good repair. This office does not believe that the meaning of the term "maintenance" would normally include computer software.

In Attorney General Opinion Letter No. 28-90, a copy of which is enclosed, we interpreted the word "maintenance" in the context of Section 67.550.3 RSMo Supp. 1989 and determined it "includes expenditures for the purposes of upkeep and to keep the facilities and buildings in a state of good repair." Id. at 3. See also Attorney General Opinion No. 14-88, a copy of which is enclosed.

Webster's's New World Dictionary, Second College Edition, 1980 defines the word "maintenance" as:

a maintaining or being maintained; upkeep, support, . . . the work of keeping a building, machinery, etc. in a state of good repair. . . .

Id. at 854. The same source defines "maintain" as:

1. to keep or keep up; continue in or with; carry on
2. a) to keep in existence or continuance . . . b) to keep in a certain condition or position, esp. of efficiency, good repair, etc.; preserve

Id.

What you have asked is whether computer software can be purchased for long term use by a municipal court with capital improvement sales tax money. Software for docketing cases, tracking those cases, record keeping, payrolling and the like would not fall within the definitions of capital improvements or the maintenance or operation of the improvement. We recognize that the software would certainly assist in the operation of the municipal court. However, the municipal court is an entity and not a capital improvement; therefore the expenditure for computer software to assist the operation of the municipal court cannot be made from sales tax dedicated under Section 94.577 RSMo.

If, however, the computer software that is purchased is for a computer system dedicated to such things as heating and air conditioning or security, then a different analysis is required. This office faced a similar matter on the issue of what constituted maintenance in regard to an indoor swimming pool in the context of a sales tax dedicated to a recreation and amateur sports subdistrict of a metropolitan zoological park and museum district. We concluded that janitorial and security manpower, use of pool chemicals and repair equipment, electricity to run motors and pumps, and utility costs to dehumidify and heat the pool were all within the definition of "maintenance." See Opinion No. 181-91, a copy of which is attached. By that same reasoning if computers are dedicated to maintenance, security, sprinkling system, heating, ventilation, air conditioning or the like, then the software for such dedicated computers would be part of the "maintenance" for the municipal court and can be purchased from sales tax revenue dedicated to capital improvements.


CONCLUSION

Normally a municipality may not pay for computer software from sales tax revenue authorized under Section 94.577 RSMo 1999 Supp. However, if there are computers dedicated to "maintenance" of a capital improvement for items such as

Dwight K. Scroggins, Jr.
Page 4

security, climate control, or fire protection, software for such computers may be purchased from such dedicated funding.

Very truly yours,



JEREMIAH W. (JAY) NIXON
Attorney General

Enclosures

BOARD OF VISITORS:
SUNSHINE LAW:

The provisions of Chapter 610 RSMo, the
Sunshine Law, applies to a Board of Visitors

created by Section 221.320 RSMo.

June 2, 2000

OPINION NO. 255-2000

The Honorable Douglas E. Long, Jr.
Presiding Judge
Twenty-Fifth Judicial Circuit Court
Division One
301 Historic 66 East, Suite 318
Waynesville, MO 65583

Dear Judge Long:

You have submitted to this office the following question:

Whether the meetings of the Board of Visitors
appointed pursuant to Section 221.320 RSMo are subject to
the provisions of the Sunshine Law?

Section 221.320 provides:

In each county of the state the presiding judge of the
circuit court, or such other judge or judges as may be
determined by local circuit court rule, may, and upon the
petition of fifteen reputable citizens shall, appoint six
persons, three of whom shall be women, and not more than
three shall have the same political affiliations, who shall
constitute a board of county visitors, two of whom, as
indicated by the appointing judge, upon the fixed
appointment, shall serve for one year, two for two years and
two for three years, and upon the expiration of the term of
each, his or her place and that of his or her successor shall,
in like manner, be filled for the term of three years, who
shall constitute a board of visitors for the inspection of all

corrective institutions supported by such county, who shall serve without compensation.

The general duties of the Board of Visitors are set out in Section 221.340 RSMo 1994 and requires the board to make personal visits at least once every three months of all corrective institutions under county or municipal control. The board has the responsibility to advise the county commission or others having jurisdiction over the institutions of any condition that may be injurious to the county or the inmates of the institution and to recommend remedies as they deem appropriate.

In addition to those duties the board has a specific duty to make yearly reports to the director of the division of family services. Section 221.350 RSMo 1994 provides:

The board of county visitors each year shall prepare a full report of their proceedings during the year, with such recommendations as they may deem advisable, and shall file the same with the director of the division of family services of the department of social services on or before the first day of November of each year. Whenever the board of county visitors shall present a memorial or report to the county commission or to the judge of the circuit court, they shall, at the same time, transmit a copy of the same to the director of the division of family services and they may at any time call upon him for advice and assistance in the performance of their duties. The director of the division of family services shall furnish each board of county visitors with such stationery, blanks and postage stamps as said board of county visitors may need to make the report prescribed by this section to the division of family services.

The question you pose turns on the question of whether the Board of Visitors is a public governmental body under the provisions of the Sunshine Law, Chapter 610 RSMo. Section 610.010(4) defines "public governmental body," in pertinent part, as follows:

. . . any legislative, administrative or governmental entity created by the constitution or statutes of this state, by order or ordinance of any political subdivision or district,

judicial entities when operating in an administrative capacity, or by executive order, including:

* * *

(d) Any other legislative or administrative governmental deliberative body under the direction of three or more elected or appointed members having rulemaking or quasi-judicial power;

(e) Any committee appointed by or at the direction of any other entities and which is authorized to report to any of the above-named entities, any advisory committee appointed by or at the direction of any of the named entities for the specific purpose of recommending, directly to the public governmental body's governing board or its chief administrative officer, policy or policy revisions or expenditures of public funds . . .

In statutory construction the intent of the legislature is to be met. Bartlett and Co. Grain v. Director of Revenue, 649 S.W.2d 220 (Mo. 1983). In construing statutes the words are to be given their plain and ordinary meaning. State ex rel. Dravo Corp. v. Spradling, 515 S.W.2d 512 (Mo. 1974).

The provisions of the Sunshine Law are to be liberally construed. Section 610.011 RSMo 1994. That determination has been recognized judicially. North Kansas City Hospital v. St. Lukes Northland Hospital, 984 S.W.2d 113 (Mo. App. 1998).

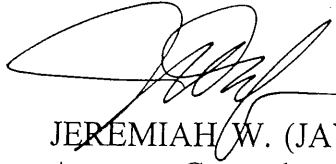
The Board of Visitors falls within the definition of public governmental body in that it is a governmental entity created by statute, it is an administrative governmental deliberative body under the direction of three or more appointed members, and is authorized to report to another public governmental body, the division of family services. See Section 610.010(4) RSMo 1999 Supp. As such it is obligated to comport its activities to Chapter 610 RSMo.

The Honorable Douglas E. Long, Jr.
Page 4

CONCLUSION

The provisions of Chapter 610 RSMo, the Sunshine Law, applies to a Board of Visitors created by Section 221.320 RSMo.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jay Nixon", is written over a horizontal line.

JEREMIAH W. (JAY) NIXON
Attorney General



ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

JEFFERSON CITY
65102

P.O. Box 899
(573) 751-3321

June 12, 2000

OPINION LETTER NO. 265-2000

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

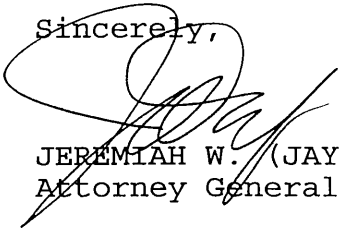
Dear Secretary Cook:

You have submitted to us a summary statement prepared pursuant to Section 116.160, RSMo Supp. 1999. The summary statement which you have submitted is as follows:

Shall the Missouri Constitution be amended to reduce the time from two years to six months that individuals are required to have been bona fide members of a licensed religious, charitable, fraternal, service, or veteran organization in order to participate in the management, conduct or operation of a licensed bingo game?

Pursuant to Section 116.160, we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Sincerely,


JEREMIAH W. (JAY) NIXON
Attorney General



ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

JEFFERSON CITY
65102

P.O. Box 899
(573) 751-3321

June 14, 2000

OPINION LETTER NO. 266-2000

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

You have submitted to us a summary statement prepared pursuant to Section 116.160, RSMo Supp. 1999. The summary statement which you have submitted is as follows:

Shall the Constitution be amended to provide that salaries recommended by the Citizens' Commission on Compensation for statewide elected officials, judges and legislators require an appropriation by the legislature in separate amounts not to exceed those proposed by the Commission and to remove the Commission's authority to recommend mileage and expenses?

Pursuant to Section 116.160, we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents. This letter replaces the letter dated June 12, 2000 regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeremiah W. Nixon", written over a circular stamp.

JEREMIAH W. (JAY) NIXON
Attorney General



ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

JEFFERSON CITY
65102

P.O. Box 899
(573) 751-3321

June 12, 2000

OPINION LETTER NO. 267-2000

The Honorable Claire C. McCaskill
Missouri State Auditor
State Capitol Building
Jefferson City, MO 65101

Dear Auditor McCaskill:

You have submitted to us a fiscal note and fiscal note summary prepared pursuant to Section 116.175, RSMo, concerning a proposed constitutional amendment relating to compensation and retention of public officers. The fiscal note summary that you submitted is as follows:

The fiscal impact of this proposal is unknown, as it will depend on the amount of compensation proposed by the Citizens' Commission and the actions of the Governor and General Assembly on future budgets.

Pursuant to Section 116.175, we approve the legal content and form of the fiscal note summary. Since our review of the fiscal note summary is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Sincerely,

A handwritten signature in black ink, appearing to read "Jay Nixon", written over a circular embossed seal.

JEREMIAH W. (JAY) NIXON
Attorney General



ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

JEFFERSON CITY
65102

P.O. Box 899
(573) 751-3321

June 12, 2000

OPINION LETTER NO. 268-2000

The Honorable Claire C. McCaskill
Missouri State Auditor
State Capitol Building
Jefferson City, MO 65101

Dear Auditor McCaskill:

You have submitted to us a fiscal note and fiscal note summary prepared pursuant to Section 116.175, RSMo, concerning a proposed constitutional amendment relating to bingo game operators. The fiscal note summary that you submitted is as follows:

The estimated fiscal impact of this proposed measure for state and local governments is unknown.

Pursuant to Section 116.175, we approve the legal content and form of the fiscal note summary. Since our review of the fiscal note summary is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Sincerely,

A handwritten signature in black ink, appearing to read "Jay Nixon", written over the word "Sincerely,".

JEREMIAH W. (JAY) NIXON
Attorney General

ARREST REPORTS:
SUNSHINE LAW:

The Sunshine Law requires disclosure
of the race of the arrested person and

the location of the arrest from an arrest report if that information is contained in the arrest report and the arrest report has not been closed pursuant to the provisions of the Sunshine Law. The status of the records is not affected if they are maintained in an electronic format.

September 7, 2000

OPINION NO. 274-2000

The Honorable Paula J. Carter
State Senator, 5th District
Missouri Senate
State Capitol Building
Jefferson City, MO 65101

Dear Senator Carter:

You have submitted the following question to this office for response:

Does the Sunshine Law require that electronic
municipal court records which include the race of arrested
persons and the location of the offense be made available to
the public?

In the information you supplied with your request you state that several municipalities have refused to provide the information to newspapers investigating the issue of racial profiling.

There are several elements to your question.¹ Among the individual elements are the following: 1) Are arrest records within the purview of the Sunshine Law; 2) If arrest records are addressed in the Sunshine Law, what portions, if any, are subject to disclosure, and when are such portions subject to disclosure; and 3) Does the existence

¹Municipal courts are part of the judiciary pursuant to Article IV, Section 23 of the Missouri Constitution. As such, those courts' records are only subject to disclosure under Chapter 610 RSMo if those courts are "operating in an administrative capacity."

of the records electronically affect the answer to whether the records are subject to disclosure.

The "Sunshine Law" is the name used to identify provisions of Chapter 610 RSMo. Since it was initially enacted in 1973 there have been numerous amendments refining the types of documents covered by the law, as well as expanding the entities subject to its provisions. Section 610.010(4)(c) defines public governmental body to include "any municipal government."

Section 610.011 RSMo 1994 states the public policy of the State of Missouri that records of public governmental bodies shall be open to the public unless otherwise provided by law. That section further states that Sections 610.010 to 610.028 should be liberally construed and exceptions therein strictly construed to promote this policy. While Section 610.011 RSMo 1994 expresses the intent of the legislature regarding records covered by Sections 610.010 to 610.028, it is of little assistance to answer your question because arrest records are governed by Sections 610.100 to 610.126 RSMo.

You have asked whether arrest records are subject to disclosure, particularly those records that would reveal the race of the arrested person and the location of the offense. Section 610.100.1(1) defines several terms which assist in answering your question. Those definitions include:

(1) **"Arrest"**, an actual restraint of the person of the defendant, or by his or her submission to the custody of the officer, under authority of a warrant or otherwise for a criminal violation which results in the issuance of a summons or the person being booked;

(2) **"Arrest report"**, a record of a law enforcement agency of an arrest and of any detention or confinement incident thereto together with the charge therefor;

(3) **"Inactive"**, an investigation in which no further action will be taken by a law enforcement agency or officer for any of the following reasons:

(a) A decision by the law enforcement agency not to pursue the case;

(b) Expiration of the time to file criminal charges pursuant to the applicable statute of limitations, or ten years after the commission of the offense; whichever date earliest occurs;

(c) Finality of the convictions of all persons convicted on the basis of the information contained in the investigative report, by exhaustion of or expiration of all rights of appeal of such persons;

(4) **"Incident report"**, a record of a law enforcement agency consisting of the date, time, specific location, name of the victim and immediate facts and circumstances surrounding the initial report of a crime or incident, including any logs of reported crimes, accidents and complaints maintained by that agency;

(5) **"Investigative report"**, a record, other than an arrest or incident report, prepared by personnel of a law enforcement agency, inquiring into a crime or suspected crime, either in response to an incident report or in response to evidence developed by law enforcement officers in the course of their duties.

In preparing this response, we have assumed that the records to which you have asked are, in fact, arrest records. The term "arrest" is normally understood to comprehend some form of physical detention or restraint of the person. See Section 544.180 RSMo 1994. The United States Supreme Court has ruled that the issuance of a traffic ticket does not constitute an "arrest" unless the person is restrained or taken into custody. Douglas v. Buder, 412, U.S. 430, 93 S.Ct. 2199, 37 L.Ed.2d 52 (1973). The Court has recently ruled that a traffic ticket is not an arrest that justifies a warrantless search. Knowles v. Iowa, 525 U.S. 113, 119 S.Ct. 484, 142 L.Ed.2d 492 (1998).

Excessive speeding, however, can result in an "arrest" as contemplated by Chapter 610 RSMo. If the speeding violation is five miles per hour or less over the posted limit, it is only an infraction. See Section 304.009.1 RSMo 1999 Supp. However, between five and twenty miles over the posted speed limit is a Class C misdemeanor and more than twenty miles per hour over the posted limit is a Class B

misdemeanor. See Section 304.010.10 RSMo 1999 Supp. Section 544.216 RSMo 1999 Supp. allows a police officer to arrest an individual for a violation of law, including for misdemeanors or infractions. If arrest reports are created as a result of a speeding violation, these reports are subject to the provisions of Chapter 610 RSMo.

The statute is quite clear regarding incident reports and arrest reports. Subsection 610.100.2 RSMo 1999 Supp. states "All incident reports and arrest reports shall be open records." Statutory language is to be given its plain and ordinary meaning. Turley v. Turley, 5 S.W.3d 162 (Mo. 1999).

Subsection 3 permits the closing of portions of records otherwise open to the public if the "information that is reasonably likely to pose a clear and present danger to the safety of any victim, witness, undercover officer, or other person; or jeopardize a criminal investigation . . . or which would disclose techniques, procedures or guidelines for law enforcement investigations or prosecutions" and that information "shall be redacted from any record made available pursuant" to Chapter 610 RSMo.

Section 610.105 RSMo 1999 Supp. requires that records, with exceptions not pertinent to your inquiry, be closed if a person is charged with an offense but the case is *nolle prossed*, dismissed, the individual is found not guilty or imposition of sentence is suspended. Section 610.122 RSMo 1999 Supp. provides for expungement of records under certain circumstances. Upon the existence of any of those circumstances the records of the arrest may be expunged by court order.

Protecting certain types of records from disclosure was in reaction to the circumstances that led to the initiation of litigation in Hyde v. City of Columbia, 637 S.W.2d 251 (Mo. App. 1982). In that case the name and address of the victim of a crime was released by the city to newspaper reporters and was published in the newspapers while the suspect was still at large. Before he was apprehended he harassed and terrorized the victim seven separate times. The court stated:

To construe the Sunshine Law to open all criminal investigation information to anyone with a request subverts neither the public safety policy of our state nor the personal security of a victim -- but rather, courts constitutional violations of the right of privacy of a witness or other citizen unwittingly drawn into the criminal investigation process as well as the right of an accused to a fair trial. Such a construction leads to the absurdity . . . that an

assailant unknown as such to the authorities, from whom the victim has escaped, need simply walk into the police station, demand name and address or other personal information--without possibility of lawful refusal, so as to intimidate the victim as a witness or commit other injury. [Court's emphasis.]

Id., 637 S.W.2d at 263.

Stating its intent to avoid an unlawful or absurd application of the law, the Court determined that "the name and address of a victim of crime who can identify an assailant not yet in custody is not a public record under the Sunshine Law." Id., 637 S.W.2d at 263. [Court's emphasis.] Although the Sunshine Law has been amended subsequent to Hyde v. City of Columbia, supra, the foregoing statement by the Court in Hyde appears still valid.

The availability of the records is not affected if they are in an electronic format. Moreover, public governmental bodies are "strongly encouraged" to provide access to electronic records in an electronic format to the greatest extent feasible. Section 610.029 RSMo 1999 Supp. Even if, however, such a format is not provided the records should be reproduced in hard copy and made available for inspection if such records are otherwise open to inspection.

Arrest and incident reports are open records, subject to certain restrictions mentioned above. Information that could endanger a person or jeopardizes a criminal investigation or reveals law enforcement techniques are to be redacted from records that are provided. Moreover, upon the occurrence of certain enumerated events, or the passage of time, the records become closed, and may be expunged. However, to the extent that the records are open records at the time such records are sought, if the records contain the race of the individual arrested or the location where arrested, that information should be disclosed. This conclusion applies to arrest records as defined in Section 610.100.1(1)(2).

The Honorable Paula J. Carter
Page 6

CONCLUSION

The Sunshine Law requires disclosure of the race of the arrested person and the location of the arrest from an arrest report if that information is contained in the arrest report and the arrest report has not been closed pursuant to the provisions of the Sunshine Law. The status of the records is not affected if they are maintained in an electronic format.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeremiah W. Nixon", written over the printed name.

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

JEFFERSON CITY

65102

November 16, 2000

P.O. Box 899
(573) 751-3321

RECEIVED
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OPINION LETTER NO. 297-2000

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

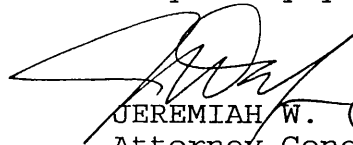
Dear Secretary Cook:

This opinion letter is in response to your request for our review under Section 116.332, RSMo, of the sufficiency as to form of an initiative petition relating to a proposed constitutional amendment concerning firefighters, ambulance personnel, and dispatchers having the authority to organize and bargain collectively. A copy of the initiative petition that you submitted to this office on November 9, 2000, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,



JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

JEFFERSON CITY

65102

November 28, 2000

P.O. Box 899
(573) 751-3321

OPINION LETTER NO. 299-2000

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Section 116.332, RSMo, of the sufficiency as to form of an initiative petition relating to a proposed law to amend Section 571.030, RSMo, by The Vermont Project. A copy of the initiative petition that you submitted to this office on November 20, 2000, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,



JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure



ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

JEFFERSON CITY

65102

P.O. Box 899
(573) 751-3321

December 6, 2000

OPINION LETTER NO. 301-2000

The Honorable Claire C. McCaskill
Missouri State Auditor
State Capitol Building
Jefferson City, MO 65101

Dear Auditor McCaskill:

By letter dated November 28, 2000, you have submitted a fiscal note and fiscal note summary prepared pursuant to Section 116.175, RSMo, concerning a proposed constitutional amendment related to Firefighters Collective Bargaining Rights. The fiscal note summary which you submitted is as follows:

The annual costs to paid fire departments and districts, ambulance departments and districts, and dispatch agencies to enter into collective bargaining contracts are approximately \$251,600 to \$3,145,000, depending upon the number of entities entering into such contracts.

Pursuant to Section 116.175, we approve the legal content and form of the fiscal note summary. Since our review of the fiscal note summary is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Sincerely,

JEREMIAH W. (JAY) NIXON
Attorney General



ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

JEFFERSON CITY

65102

December 6, 2000

P.O. Box 899
(573) 751-3321

OPINION LETTER NO. 303-2000

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

On December 1, 2000, you submitted to us a summary statement prepared pursuant to Section 116.334, RSMo Supp. The summary statement which you have submitted is as follows:

Shall Article XIII of the Missouri Constitution be amended to permit specified firefighters and ambulance personnel, and dispatchers of fire departments, fire districts, ambulance districts and ambulance departments and fire and emergency medical services dispatchers of dispatch agencies, to organize and bargain collectively in good faith with their employers through representatives of their own choosing and to enter into enforceable collective bargaining contracts with their employers concerning wages, hours, binding arbitration and all other terms and conditions of employment, except that nothing in this amendment shall grant to the aforementioned employees the right to strike?

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Sincerely,

A handwritten signature in black ink, appearing to read "Jay Nixon", written over a horizontal line.

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

JEFFERSON CITY
65102

P.O. Box 899
(573) 751-3321

December 15, 2000

OPINION LETTER NO. 315-2000

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Section 116.332, RSMo, of the sufficiency as to form of an initiative petition regarding a proposed constitutional amendment, by Husch & Eppenger, LLC, relating to the Tobacco Settlement, Version 3A. A copy of the initiative petition that you submitted to this office on December 5, 2000, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,



JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure



ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

JEFFERSON CITY
65102

P.O. Box 899
(573) 751-3321

December 15, 2000

OPINION LETTER NO. 316-2000

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Section 116.332, RSMo, of the sufficiency as to form of an initiative petition regarding a proposed constitutional amendment, by Husch & Eppenger, LLC, relating to the Tobacco Settlement, Version 4A. A copy of the initiative petition that you submitted to this office on December 5, 2000, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

JEFFERSON CITY

65102

December 15, 2000

P.O. Box 899
(573) 751-3321

OPINION LETTER NO. 322-2000

The Honorable Claire C. McCaskill
Missouri State Auditor
State Capitol Building
Jefferson City, MO 65101

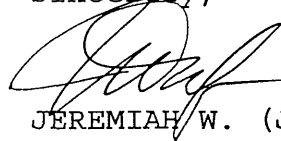
Dear Auditor McCaskill:

By letter dated December 7, 2000, you have submitted a fiscal note and fiscal note summary prepared pursuant to Section 116.175, RSMo, concerning an initiative petition proposal to amend Section 571.030, RSMo, by The Vermont Project. The fiscal note summary which you submitted is as follows:

There appears to be no direct fiscal impact on state and local governments. The indirect fiscal impact on state and local governments, if any, is unknown.

Pursuant to Section 116.175, we approve the legal content and form of the fiscal note summary. Since our review of the fiscal note summary is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Sincerely,



JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

JEFFERSON CITY
65102

P.O. Box 899
(573) 751-3321

December 15, 2000

OPINION LETTER NO. 323-2000

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

On December 8, 2000, you submitted to us a summary statement prepared pursuant to Section 116.334, RSMo Supp. The summary statement which you have submitted is as follows:

Shall section 571.030 be amended to make it lawful to carry weapons readily capable of lethal use, concealed upon or about a person, to carry such weapons into any church, place of worship, school, election precinct, building owned or occupied by any government agency, or place of public assemblage, to otherwise use such weapons in defense of self or others, and to no longer make special provision for use of such weapons by law enforcement or corrections personnel, members of the armed forces, national guard or judiciary, persons executing process, federal and state probation officers and corporate security advisors?

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Sincerely,

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

JEFFERSON CITY
65102

P.O. Box 899
(573) 751-3321

December 22, 2000

OPINION LETTER NO. 324-2000

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

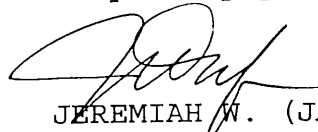
Dear Secretary Cook:

This opinion letter is in response to your request for our review under Section 116.332, RSMo, of the sufficiency as to form of an initiative petition regarding a proposed constitutional amendment, by Husch & Eppenberger, LLC, relating to the Tobacco Settlement, Version 3B. A copy of the initiative petition that you submitted to this office on December 15, 2000, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,



JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

December 22, 2000

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P.O. Box 899
(573) 751-3321

OPINION LETTER NO. 325-2000

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Section 116.332, RSMo, of the sufficiency as to form of an initiative petition regarding a proposed constitutional amendment, by Husch & Eppenberger, LLC, relating to the Tobacco Settlement, Version 4B. A copy of the initiative petition that you submitted to this office on December 15, 2000, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Jay Nixon", written over a horizontal line.

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

JEFFERSON CITY
65102

P.O. Box 899
(573) 751-3321

December 29, 2000

OPINION LETTER NO. 329-2000

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Section 116.332 RSMo for sufficiency as to form of an initiative petition relating to a proposed law amending Section 195.010 RSMo by Matt Kleinsorge. A copy of the initiative petition that you submitted to this office on December 22, 2000, is attached for reference.

We conclude that the petition must be rejected as to form. There are numerous errors in the initiative petition form submitted for review including the following:

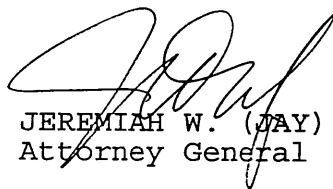
1. The date of the next general election has been left blank. The next general election is November 5, 2002.
2. The name of the Secretary of State has been left blank. The Honorable Matt Blunt will be the Secretary of State at the next general election, November 5, 2002.
3. The form contains a "Be it resolved" phrase, which is required for a constitutional amendment by an initiative petition. The required phrase for an initiative petition for a statutory change, as set forth in Article III, Section 50 of the Missouri Constitution, is "Be it enacted by the people of the state of Missouri".
4. The "Be it resolved" sentence includes a reference to Section 195.010(26) RSMo and a reference to Section 195.101(26) RSMo. There is no Section 195.101(26) RSMo; therefore, the second reference is apparently to Section 195.010(26) RSMo.
5. The proposal would change the definition of "Marijuana" and, as stated above, references as the section to be deleted and replaced as Section 195.010(26) RSMo. That provision previously defined "marijuana". See Section

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195.010(26) RSMo 1994. The definition of "marijuana" is now found at Section 195.010(24) RSMo 1999 Supp. Therefore, the form does not comport to Section 116.050.2(2) RSMo 1999 Supp. because it does not "include all sections of existing law . . . which would be repealed by the measure".

Because of our rejection of the form of the petition for the reasons stated above, we have not reviewed the petition to determine if additional deficiencies exist. Since our review is mandated by statute, no action we take with respect to such review should be construed as an opinion concerning the substance of the petition or as the expression of any view respecting the objectives of the petition's proponents.

Very truly yours,



JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure